

A Thesis Submitted for the Degree of PhD at the University of Warwick

Permanent WRAP URL:

<http://wrap.warwick.ac.uk/47800>

Copyright and reuse:

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it.

Our policy information is available from the repository home page.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk

Performing “good governance:”
Commissions of Inquiry and the Fight against Corruption in Uganda

by

Monica Twesiime Kirya

Thesis submitted in partial fulfillment of the requirements for a Doctor of
Philosophy (PhD) Degree in Law

University of Warwick
School of Law

Supervisor: Prof. Abdul Paliwala

July 2011

Table of Contents

Dedication.....	i
Lists of Tables, Cases and Laws	ii
Acknowledgments	v
Declaration	vii
Abbreviations and Acronyms.....	viii
Abstract.....	x

Chapter 1

Introduction and Background

1.1 The fight against corruption	1
1.2 Context	6
1.3 Research Domain	11
1.4 Justification for the research study	14
1.5 Scope and objectives the study.....	18
1.6 Research Design and Methods	19
1.7 Definitions and key concepts of the study.....	26
1.8 Analytical framework.....	29
1.9 Thesis Outline.....	32

Chapter 2

The Global Anti-corruption Framework: “Good Governance,” International Non-Governmental Organisations (INGOs) and International Law

2.1 Introduction	35
2.2 The “good governance” discourse and anti-corruption	36
2.3 The Role of Transnational NGOs – The Corruption Perceptions Index and the Moralisation of Good Governance Discourse.....	72
2.4 International Anti-Corruption Law.....	77
2.5 Multi-National Enterprises: from bribe givers to moral entrepreneurs?	86
2.6 The emerging global anti-corruption norm	89
2.7 Chapter Conclusion: An emerging consensus undermined by contradictions	93

Chapter 3

The domestic framework for anti-corruption in Uganda: how to be a “good governor” without undermining your support base (part I)

3.1	Introduction	94
3.2	Uganda’s “near perfect” anti-corruption framework.....	98
3.3	The role of non-state actors in anti-corruption in Uganda	128
3.4	Neo-patrimonialism and the “lack of political will” to fight corruption.....	140
3.5	How the Uganda government subverts anti-corruption	153
3.6	Chapter conclusion: Between accountability and impunity – commissions of inquiry as the solution to the dilemma of being a good governor and a powerful patron	182

Chapter 4

The role of Commissions of Inquiry in Governance: legitimization through truth-finding

4.1	Introduction	184
4.2	Commissions of Inquiry – ubiquitous instruments of governance.....	185
4.3	Features of Commissions of Inquiry	196
4.4	The Role of Commissions of Inquiry in Governance.....	210
4.5	Chapter Conclusion	227

Chapter 5

Commissions of Inquiry into Corruption in Uganda (1999-Present)

5.1	Introduction	230
5.2	The Legal and Administrative Framework for Commissions of Inquiry.....	231
5.3	Commissions of inquiry in Uganda (1986-1996).....	236
5.4	Commissions of inquiry into corruption during the “good governance” era (1996-present).....	238
5.4.1.	The Police Inquiry 1999	243
5.4.2	The Junk Helicopters Inquiry, 2000	255
5.4.3	The Uganda Revenue Authority (URA) Inquiry 2002	265
5.4.4.	The Global Fund Inquiry 2005	279

Chapter 6

Analysing the role of commissions of inquiry in Uganda: how to be a good governor without undermining your support base (part II)

6.1	Introduction	295
-----	--------------------	-----

6.2	Deciphering the role of commissions of inquiry in Uganda	296
6.3	Commissions of inquiry as conditionality compliance mechanisms.....	310
6.4	Commissions of inquiry as “the play of good governance,” in Uganda	314
6.5	Commissions of inquiry and the preservation of the patronage system.....	327
6.6	Commissions of inquiry, accountability and resistance	334

Chapter 7

Conclusion

7.1	Commissions of inquiry: multifaceted tools of governance.....	339
7.2	“Going out of style” – the end of the commissions of inquiry era?	344

Bibliography	350
---------------------------	------------

Appendix

Commissions of Inquiry in Uganda (1962- present)	382
---	------------

Dedication

For Mark, Immanuel and Sifi; and for Mummy and Daddy.
And to the memory of Miss Jean Sumner, for her kind intervention at a crucial time in my education.

Lists of Tables, Cases and Laws

Tables

Table 1	<i>Uganda Corruption Perception Index Rankings 1999 to 2010</i>	Page 96
Table 2	<i>Uganda Global Integrity Scorecard 2006-2009</i>	Page 98
Table 3	<i>Commissions of Inquiry into Corruption in Uganda 1999 - Present</i>	Page 244

Cases

<i>Andrew Mwenda and Another v. The Attorney General of Uganda</i>	Constitutional Petition No. 6 of 2006
<i>Annebrit Aslund v. The Attorney General of Uganda</i>	Miscellaneous Cause No. 60 of 2004
<i>Attorney General of Commonwealth Australia v. Colonial Sugar Refinery Company</i>	1914 A.C. 237
<i>Charles Onyango Obbo and Others v. The Attorney General of Uganda</i>	Constitutional Appeal No. 2 of 2002
<i>Charles Mwanguhya Mpagi and Angelo Izama v. the Attorney General</i>	Miscellaneous Cause No. 71 of 2009
<i>Fox Odoi & Another v. The Attorney General of Uganda</i>	Constitutional Petition No. 8 of 2003
<i>Jim Muhwezi and Others v. the IGG and the Attorney General</i>	Constitutional Petition No. 10 of 2007
<i>Kakooza Mutale v. The Attorney General of Uganda</i>	High Court Civil Suit No. 40 of 2003
<i>Kizza Besigye versus YK Museveni and the Electoral Commission of Uganda</i>	Presidential Election Petition No. 1 of 2001; No. 1 of 2006.
<i>McGuinness v. Attorney General of Victoria</i>	(1940) 63 C.L.R. 73
<i>Sebutinde v. The Attorney General and Uganda Revenue Authority</i>	Constitutional Reference No. 5 of 2005
<i>Uganda v. Anna-Liza Mondon and Elizabeth</i>	High Court Criminal Session case

<i>Ngororano</i>	No. 30 of 2009
<i>Ssemogerere & Others V. The Attorney General</i>	Constitutional Petition No. 3 of 2000
<i>Uganda v. Emmanuel Katto</i>	Criminal Case No. 86 of 2005 (unreported), Chief Magistrates' Court of Buganda Road, Kampala.
<i>Uganda v. Freddie Kavuma Schoof</i>	High Court Criminal Session Case No. 168 of 2008
<i>Uganda v. Teddy Ssezi Cheeye</i>	High Court Criminal Session Case No. 1254 of 2008
<i>Uganda v. Warren Kizza Besigye</i>	High Court Criminal Case No. 794 of 2005

Statutes

Access to Information Act	Act No. 6 of 2005
Anti-Corruption Act	Act No. 6 of 2009
Commissions of Inquiry Act	Cap. 166 Laws of Uganda
Constitution of Sierra Leone	Act No. 6 of 1991 Laws of Sierra Leone
Constitution of the Republic of Uganda	1995
Delegation of Powers and Duties Act	Cap. 260 Laws of Uganda
Inspectorate of Government Act	Act No. 5 of 2005
Judicature Act	Cap. 13 Laws of Uganda
Leadership Code Act	Act No. 5 of 2002
National Audit Act	Act No. 7 of 2008
The Commission of Inquiry into Allegations of Corruption in the Uganda Revenue Authority Notice	Legal Notice No. 3 of 2002.
The Judicial Commission of Inquiry into the Police Force (Amendment) Notice	Legal Notice No. 2 of 1999
Global Fund Inquiry Notice	Legal Notice No. 15 of 2005

Penal Code Act	Cap. 120 Laws of Uganda
Prevention of Corruption Act	Cap. 121 Laws of Uganda
Public Procurement and Disposal of Assets Act	Act. No. 1 of 2003
Rules of Procedure of the Parliament of Uganda	2006
Uganda Revenue Authority Act	Cap. 196 Laws of Uganda
UK Inquiries Act	Ch. 12, 2005
US Foreign Corrupt Practices Act	15 U.S.C.
The Commission of Inquiry (purchase of Military Helicopters) Notice	Legal Notice No. 16 of 2000.
Whistleblowers Protection Act	Act No. 6 of 2010

International Treaties, Declarations and Conventions

African Union Convention Against Corruption	2003
African Union Declaration on Democracy, Political, Economic and Corporate Governance	2003
European Union Convention Against Corruption Involving Officials	1997
Organisation for Economic Cooperation and Development Anti-Bribery Convention	1997
Organisation of American States (OAS) Anti-Corruption Convention	1996
United Nations Code of Conduct for Public Officials	1997
United Nations Convention Against Corruption	2005
United Nations Convention on Transnational Organised Crime	2000

Acknowledgments

I would like to express my sincere thanks to the following people for their support throughout this undertaking:

My supervisor, Professor Abdul Paliwala. Thank you for your patience, wisdom and guidance. I could not have wished for a better supervisor.

The Commonwealth Scholarship Commission and the British Council, who awarded and/or administered the scholarship which made this possible.

Makerere University Kampala, Uganda, the institution that nominated me for the Commonwealth Academic Staff Scholarship. I especially thank colleagues at the Faculty of Law and Staff from the Human Resources Davison Training Office for their support throughout this endeavour.

Sylvie Namwase for her dedicated and efficient assistance with various aspects of the field study. I thank the respondents to this study, including former Commissioners and Counsel to various inquiries, State Attorneys at the Ministry of Justice and DPP's office, officials at the Directorate of Ethics and Integrity, and many others. Thanks to Justices Sebutinde and Kiryabwire, for their valuable time and insights.

Colleagues and fellow PhD students at the School of Law for their encouragement and support over the past three and a half years, particularly Sharifah Sekalala, Dorothy Kwagala-Igaga, Mamman Lawan, Anna Puthuran, Chikosa Silungwe, Shabaz Cheema, Bede Opata, Yazan Haddadin and Michanne Heynes-Prempeh.

Colleagues and neighbours at Lakeside Staff and Family Apartments for help with baby-sitting, dropping off and picking up children from school, grocery shopping and general moral support. I am particularly grateful to Lucille Maqubela, Mona & Ratnaka Adhikari, Saif Al Husaini & Amal Almamaari, and Hamza & Afaf Al Harthi.

Thanks to Kate & Enoch Mwesigwa, Emma Sempebwa & Kwame Owusu. You are true friends - I can never repay the debt I owe you.

Malika Maneno and Leigha Fallon. You were more than just baby-sitters; you've become good friends and little sisters to me.

Friends from City Church Coventry for their moral and material support. Thanks to Ruth & Matthew Ling, Sarah & Richard Gamble, Jacqueline & Chris Hamer-Hodges, Jenny & Paul and Hannah Nathaniel.

My Mum & Dad for always believing in me and my parents-in-law for their unreserved support for this endeavour. Special thanks to Dad for twice leaving the warmth of Uganda to come to freezing England to keep me company and help me with child-care.

Last but not least, my husband Mark, son Immanuel and daughter Sifi. Thank you Mark for not letting me give up way back when my applications for scholarships and/or university places were unsuccessful, for always believing that I had what it took to accomplish this despite the difficulties and not letting me wallow in self-pity, for the innumerable sacrifices you've made to make this possible, for everything you've been and are to me. Immanuel and Sifi – I hope that when you're older, you'll understand why Mummy was a student like you and why she spent all those hours in the library and/or on the computer. And I hope you'll forgive me for the many times when I let the stress rub off on you. I'm glad I brought you along for this adventure and I hope that when we look back on it, it will be worth it for all of us.

Declaration

I declare that this thesis is my original work and that it has never been submitted for publication or for examination in any institution of higher learning.

Monica Twesiime Kirya

Abbreviations and Acronyms

ACC	Anti-Corruption Court
ACCU	Anti-Corruption Coalition of Uganda
AG	Attorney General (of Uganda)
AI	Amnesty International
APRM	African Peer Review Mechanism
AU	African Union
BBC	British Broadcasting Corporation
CG	Commissioner General (Uganda Revenue Authority)
CID	Criminal Investigations Department
COSASE	Committee on Statutory Authorities and State Enterprises
CSO(s)	Civil Society Organisation(s)
DANIDA	Danish Agency for International Development Assistance
DEI	Directorate of Ethics and Integrity
DFID	Department for International Development
DPP	Directorate / Director of Public Prosecutions
DRC	Democratic Republic of Congo
EU	European Union
FCPA	Foreign Corrupt Practices Act
FDC	Forum for Democratic Change
GF	Global Fund (for HIV/AIDs, TB and Malaria)
GI	Global Integrity
GOU	Government of Uganda
GRC(s)	Governance-Related Conditionality / Conditionalities
HIV/AIDS	Human Immuno-deficiency Virus/Acquired Immune Deficiency Syndrome
HRW	Human Rights Watch
IBRD	International Bank for Reconstruction and Development
IFI(s)	International Financial Institution(s)
IG	Inspectorate of Government
IGG	Inspector General of Government
IMF	International Monetary Fund
INGO	International Non-Governmental Organisation
JLOS	Justice, Law and Order Sector
LC(s)	Local Council(s)
LRA	Lord's Resistance Army
MCC	Millenium Challenge Corporation
MOFPED	Ministry of Finance, Planning and Economic Development
MOU	Memorandum of Understanding
NDA	National Drug Authority
NEPAD	New Partnership for Africa Development
NGO	Non-Governmental Organisation

NRA	National Resistance Army
NRM	National Resistance Movement
NSSF	National Social Security Fund
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
PAC	Public Accounts Committee
PEAP	Poverty Eradication Action Plan
PPDA	Public Procurement and Disposal of Assets Authority
PRSP	Poverty Reduction Strategy Paper
PU	Privatisation Unit
PWC	PriceWaterhouseCoopers
Shs	Shillings
SWAP	Sector-Wide Approach
TB	Tuberculosis
TI	Transparency International
TNC(s)	Trans-National Corporation(s)
UDHR	Universal Declaration of Human Rights
UDN	Uganda Debt Network
UJAS	Uganda Joint Assistance Strategy
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UPC	Uganda Peoples' Congress
UPDF	Uganda Peoples' Defence Forces
URA	Uganda Revenue Authority
USA	United States of America
USAID	United States Agency for International Development
WB	World Bank
WBS	Wavah Broadcasting Services

Abstract

This thesis investigates the role of temporary, *ad hoc* commissions of inquiry appointed to investigate corruption in Uganda from 1999 to the present. It is based on a qualitative research study that involved analysing the relevant literature, official documents such as inquiry reports, newspaper reports and web-based materials; as well as interviews and focus group discussions. The study locates itself in an analysis of and inter-relationship between two dynamics - of global 'good' governance, and of the influence of neo-patrimonial politics that characterise local governance - on the appointment, processes and outcomes of commissions of inquiry into corruption in Uganda. In looking at these factors, the thesis aims at explaining why the institution of the *ad hoc* commission of inquiry has emerged as the anti-corruption "instrument of choice" during this period of Uganda's history.

The findings suggest that the global anti-corruption framework signified by the good governance agenda is hindered by various factors such as the self-interest of donors, the moral hazard inherent in aid and the illegitimacy of conditionality; all of which contribute to the weak enforcement of governance-related conditionalities. This in turn causes aid-recipient countries such as Uganda to do only the minimum necessary to keep up appearances in implementing governance reforms. National anti-corruption is further hindered by the government's tendency to undermine anti-corruption by selective or non-enforcement of the law, the rationale being to insulate the patronage networks that form the basis of its political support from being dismantled by the prosecution of key patrons involved in corruption. Thus, the need to appear to be a "good governor" whilst protecting patrons from possible prosecution necessitates a symbolic approach to anti-corruption that nonetheless seems authentic. Ad hoc commissions of inquiry chaired by judges, which facilitate a highly publicised inquisitorial truth-finding process, therefore emerge as the ideal way of tackling corruption because they facilitate "a trial in which no-one is sent to jail."

Commissions of inquiry into corruption in Uganda have therefore played a complex and multiple role in anti-corruption and governance in Uganda. They enabled the government to prove its credentials as a good governor especially at a time when it was being discredited for its reluctance to adopt a multi-party system of government. They also served to appease a public that was appalled by the various corruption scandals perpetrated by a regime that had claimed to introduce "a fundamental change and not a mere change of guards" in Uganda's politics. Nevertheless, while they enabled the regime to consolidate power by appeasing donors and the public, they also constituted significant

democratic moments in Uganda's history by allowing the public- acting through judges and the media- to participate in holding their leaders accountable for their actions in a manner hitherto unseen in a country whose history had been characterised by dictatorial rule.

Chapter 1

Introduction and Background

1.1 The fight against corruption

This study analyses the role of commissions of inquiry in the fight against corruption in Uganda from the late 1990s to 2010. It aims at ascertaining their position in the power dynamics of global and national anti-corruption governance involving International Financial Institutions (IFIs), bilateral donors, the Uganda government and the Ugandan public. Thus, it examines the role of governance-related aid conditionalities and the attendant “good governance” discourse as instruments of global governance- and patronage and clientelism as instruments of domestic governance - in the appointment, processes and outcomes of commissions of inquiry specifically appointed to investigate corruption in Uganda. The thesis suggests that commissions of inquiry are a manifestation of the contradictions and paradoxes that bedevil global and national anti-corruption frameworks; thereby rendering them neither effective nor completely ineffective, but illustrative of the concurrent potential and limitations of governance-related aid conditionalities and their implementation in a “neo-patrimonial” political context such as Uganda.

The context for the study is the global fight against corruption at its local off-shoot in Uganda. This “fight” is agreed by scholars to have taken off at the end of the cold war, beginning in the early 1990s. It has been spearheaded by the World Bank, donor agencies

such as the UK Department for International Development (DFID) and the United States Agency for International Development (USAID), as well as a growing number of international civil society organisations such as Transparency International and Global Integrity. Furthermore, the 1990s as well as the present decade have witnessed an exponential increase in the number of international treaties against corruption. Starting with the passing of the Organisation for Economic Cooperation and Development (OECD) Anti-bribery Convention in 1997 and culminating in the United Nations Convention against Corruption in 2005, these treaties are helping to forge international consensus on corrupt practices and how to fight them. These developments have enabled anti-corruption to become so prominent in international law and international relations that some scholars such as McCoy have opined that there is an emerging global anti-corruption norm.¹

The present-day fight against corruption is indeed a reflection of a hitherto unseen global consensus on the concept of corruption and how it negatively impacts upon development. Prior to the 1990s, starting from the 1960s up until the 1980s, most of the political science and economic scholars who studied and wrote about corruption eschewed moral and other value-laden perspectives on corruption, excusing it as something unavoidable at certain stages of the development process. Scholars who came to be referred to as “functional-integrationists” said that corruption was beneficial because it allowed the integration and involvement of various groups who would otherwise not be able to participate in public

¹ McCoy, J. (2001) “The Emergence of a Global Anti-Corruption Norm,” *International Politics* 38:65-90

life by giving the citizens access to decision-makers.² Thus, it could “humanise” an otherwise impersonal bureaucracy. Other scholars, who came to be known as “market revisionists” argued that corruption could introduce efficiency into a system where there was none, “oiling” and “greasing” the machinery of the system by cutting red-tape.³

By the 1990s, such “functional-integrationist” and “revisionist” views of corruption had become unpopular, as the World Bank turned its guns on corruption as the main factor that explained the failure of development. The World Bank’s anti-corruption mandate has been questioned by some, who argue that the Bank is specifically prohibited by its instruments from interfering in the political matters of its members.⁴ The Bank has defended itself by pointing out that it is mandated to ensure that the proceeds of its loans are used only for the purposes for which they are granted, and to ensure that loan proceeds are used “with due economy and efficiency.”⁵ Accordingly, starting in 1995, the World Bank became more explicit in its concern over corruption as a factor that affects the economy of a country and therefore as being within its mandate.⁶

The mechanism through which the World Bank and other donor agencies such as DFID and USAID have sought to promote anti-corruption in developing countries such as

² Bayley, D. H. (1966), "The Effects of Corruption in a Developing Nation," *The Western Political Quarterly* 19(4): 719-732.

³ Leff, N. H. (1964). "Economic Development through Bureaucratic Corruption," *American Behavioral Scientist* 8(3): 8-14; Nye, J. (1967). "Corruption and Political Development: A Cost-Benefit Analysis." *American Political Science Review* 61(2): 417-427.

⁴ For an early critique of this issue, see Yokota, Y. (1976) “Non-political character of the World Bank,” *Japanese Annual of International Law* pp. 39. 64. See also Article IV, Section 10 of the *IBRD Articles of Agreement*.

⁵ Article III, section 5(b) and (c) of the *IBRD Articles of Agreement*.

⁶ For a historical discussion of the World Bank’s role in curbing corruption, see Shihata, I. (1997), “Corruption: A General Review with an Emphasis on the role of the World Bank ,” *Dickinson Journal of International Law*, 15: 451-486

Uganda is under the rubric of “good governance”. This has been part of the wider agenda of promoting neo-liberal capitalism by “rolling back the state”⁷ through privatisation, and other measures to create ideal conditions for markets, investments and private property. The need for a secure environment for capitalism in turn generated a drive for competitive democracy, accountability and the rule of law, with special attention given to corruption as a major hindrance to these values and to development in general.⁸

In resonance with these developments, there have been an increasing number of international and regional treaties against corruption, culminating in the 2005 United Nations Convention against Corruption (UNCAC). Accordingly, in order to comply with international law and more importantly, to obtain loans and grants from donors, states such as Uganda have been taking steps to eliminate corruption. The commitment to anti-corruption is enshrined in the Poverty Reduction Strategy Paper (PRSP) that forms the backbone of development policy. The commitment is exhibited through law reform, establishing and / or re-structuring of institutions and organisations with an anti-corruption mandate, as well as instituting commissions of inquiry to investigate particular scandals or agencies.

⁷In reality, the State is not rolled back but expanded as its role changes from that of positive intervention in economic production to that of a regulator, with a myriad of “independent” regulatory commissions and authorities regulating various types of economic activity. For more on this, see Majone, G. (1997). "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance." *Journal of Public Policy* 17(02): 139-167.

⁸ See Craig D., and D. Potter (2007) *Development Beyond Neo-Liberalism? Governance, Poverty Reduction and the Political Economy*, London: Routledge.

Thus for example, Uganda's Guiding Policy Document, the Uganda Development Plan 2010,⁹ proclaims fighting corruption as one of the government's priorities. A new Anti-corruption Act that reflects the developments in international law was enacted in 2009. Institutions such as the Inspectorate of Government, the Directorate of Ethics and Integrity, the Public Procurement and Disposal of Public Assets Authority and the Auditor General, have all been established with a specific view to fighting corruption.¹⁰ In addition, despite all the existing permanent institutions, the government has on various occasions, established *ad hoc* judicial commissions of inquiry to investigate particular institutions or scandals in Uganda.¹¹

Unfortunately, despite the efforts at both international and national level, anti-corruption has met with limited success. Today, corruption is considered one of the single most serious threats to development and democracy in Uganda, a fact that is readily admitted in the National Development Plan 2010.¹² Despite numerous legal and administrative interventions, Uganda's rankings in Transparency International's Corruption Perception Index (CPI) have continued to be poor.¹³ In addition, rankings by Global Integrity show that Uganda has one of the widest implementation gaps between anti-corruption policy

⁹ Government of Uganda, National Planning Authority; (2010) *National Development Plan 2010/11-2014/15*, at p. 23.

¹⁰ The role of such institutions is discussed in greater detail in Chapter 3.

¹¹ See for example, the Poverty Eradication Action Plan of 2002/3 discussed in greater detail in Chapter 2, at p. 40-41

¹² See Uganda National Development Plan (2010), para. 73, at p. 23

¹³ Uganda was ranked 111th out of 179 in 2007, 126th out of 180 in 2008 and 130th out of 180 in 2009, 130 out of 178 in 2010. The rankings are available at <http://www.transparency.org/publications/gcr>, (last accessed 26 November 2010).

and practice.¹⁴ Citizens and donors alike have expressed displeasure at this negative trend.¹⁵ Indeed, it would be fair to say that corruption is one of the most serious problems facing Uganda today.

1.2 Context

Uganda is a landlocked country in East Africa, bordered by Kenya to the East, Tanzania and Rwanda to the South, the Democratic Republic of Congo to the West and the Sudan to the North. It is a poor country with a Human Development Index of 0.5 and per capita income of \$1,059.¹⁶ The population stands at approximately 32 million, of which the majority are young people – the median age is just 15 years. 87% of the populations live in rural areas where they lack access to clean water, health services and other amenities. Access to education has improved over the past 15 years due to the introduction of free, universal primary education. This has greatly improved literacy rates which now stand at 66.8%.¹⁷

¹⁴ See Global Integrity Uganda Report, <http://report.globalintegrity.org/Uganda/2009>, accessed 10 July 2011.

¹⁵ See for example, Jasper Tumuhimbise's blog (2009). Poverty or political will? Jasper's Views: Corruption in Uganda. Kampala. Kadiresan, K. (2010). See also Speech by World Bank Country Manager on the occasion of the 2010 Budget Speech. *The Independent*. "Mr. President, you must start fighting corruption seriously," excerpts from a Speech by the Uganda World Bank Country Manager on the occasion of the 2010 Budget Speech, *The Independent*, 10 March 2010.

¹⁶ See UNDP Human Development Report 2009, at http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_UGA.html, accessed 17 August 2010. Compare Uganda to Norway, which ranks first in HDI values with a score of 0.97, and Niger as the worst with 0.3; or Liechtenstein which has the highest GDP per capita of \$85,382 and the Democratic Republic of Congo that has the lowest GDP per capita of \$298.

¹⁷ See <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>, accessed 17 August 2010.

In compliance with the requirements of good governance, Uganda is a multi-party democracy with one House of Parliament which is dominated by the ruling National Resistance Movement Party which has 205 out of 332 seats in the House.¹⁸ There is a fairly independent judiciary, composed of Judges appointed by the President on the recommendation of the Judicial Service Commission and approved by parliament. There is relative freedom of the press and academic freedom. The country is governed by the Constitution of 1995, which is the Supreme Law. Other Applicable Laws include Acts of Parliament, Common Law and Doctrines of Equity, and customs and traditions that are not inconsistent with the Constitution or any other written law.¹⁹

Over the past two decades, Uganda has encountered various corruption scandals, ranging from fraudulent privatisation of state enterprises and botched deals that procured faulty military equipment, to the embezzlement of millions of dollars earmarked for anti-HIV/AIDS activities. Some state entities, notably the Uganda Police Force and the Uganda Revenue Authority, have attracted unrelenting public outcry regarding their corrupt organisational cultures. Uganda has continued to rank poorly in international corruption ratings by Transparency International and Global Integrity, a point that will be elucidated later on in this thesis. The present (NRM) government has often responded to such scandals or outcry by appointing a commission of inquiry.

¹⁸ As of February 15, 2011.

¹⁹ See the Judicature Act of Uganda, Sections 14 and 15, Cap. 13 Laws of Uganda 2000.

The corruption scandals that have rocked Uganda in the 1990s and 2000s must be seen within the overall context of Uganda's post-independence history. The first few years after independence in 1962 were "golden" ones, characterised by economic growth, expanding infrastructure, and relative stability in the political and social life of the country. However, it was not long before the façade of peace and prosperity began to unravel. In 1966, then President Milton Obote suspended the Independence Constitution by force, and imposed an un-debated and un-agreed upon "pigeon-hole" constitution on the country in 1967.²⁰ In 1971, rising tensions amongst the ruling elite and army leaders culminated in the overthrow of Obote by the notorious dictator Idi Amin, who ruled the country in a reign of terror until 1979 when he was ousted by a combined force of Ugandan liberators and the Tanzania Peoples' Defence Forces. His regime resulted in the near total collapse of the Ugandan State and economy. In 1980, the country held its first elections in 18 years of independence, which were won by Obote's Uganda People's Congress (UPC) Party. The result was bitterly contested by the Democratic Party (DP), who were widely believed to have been the true winners. In protest at UPC's rigging of the election, Yoweri Museveni, a member of the Uganda Patriotic Movement, formed the National Resistance Army/Movement, (NRA/M) and launched a guerrilla "bush" war.²¹

²⁰ The "Pigeon-hole" Constitution was named thus because MPs found it in their pigeon-holes one morning and were immediately asked to promulgate it without any debate. See Kituo Cha Katiba (East African Centre for Constitutional Development), *Uganda: Key Historical and Constitutional Developments*, at http://kituochakatiba.org/index.php?option=com_content&task=view&id=80, last accessed 17 February 2011.

²¹ Mutibwa, P. (1992), *Uganda since independence: A story of unfulfilled hopes*. London, Hurst & Co.

Due to the fact that the ruling UPC government was preoccupied by crushing the new rebel movement, the next 5-6 years in Uganda's history were characterised by a further breakdown of infrastructure, economic collapse, terror and insecurity. In 1985, Obote was once again overthrown by one of his army generals, Bazillio Okello, during a time when the government had entered into "peace talks" with the NRA rebels. The peace talks never amounted to much and in January 1986, Museveni's NRA marched into the capital, Kampala, and took over the government.²²

The NRA and its political wing, the NRM proclaimed themselves the liberators of Uganda and were indeed hailed as such by a war-weary and impoverished population. In Yoweri Museveni's now famous swearing in speech, on 29 January 1986 he declared a new era of Ugandan politics, promising a "fundamental change and not just a mere change of guards." His message of hope reverberated throughout the population, who rallied behind his reform effort.²³

Museveni was known to espouse Marxist ideology and had originally envisaged a Ugandan Utopia to be built upon the foundation of the NRM's take-over manifesto known as the Ten Point Programme. The ten point programme envisioned a developmental state playing a key role in the political, social and economic life of the country. However, the urgent need for donor funding to rebuild the collapsed infrastructure meant that such

²²Ibid.

²³ Museveni, Y. K. (1997). *Sowing the Mustard Seed*. London, Macmillan.

ideals had to be abandoned in favour of neo-liberal capitalist economic reforms and the accompanying good governance agenda propounded by the donors.²⁴

Thus began the economic and administrative re-organisation of Uganda; including currency reform, banking reform, privatisation of state enterprises, civil service reform, judicial reform and constitutional reform. Uganda performed so well in this regard that it became a “star pupil” of the World Bank and other donors. There was however, a fly in the ointment as the reforms were being implemented, particularly those relating to privatisation, when it emerged that the process was tainted by corruption. In particular, the involvement of the President’s brother Caleb Akandwanaho aka Salim Saleh, as a potential buyer in the controversial privatisation of Uganda Commercial Bank and Uganda Grain Millers, were the first signs that the “fundamental change” was perhaps after all, only “business as usual.”²⁵ An investigation by a Parliamentary Committee of Inquiry into the privatisation process was critical of the government and even though it recommended that action be taken against Salim Saleh and others who had been implicated, nothing was done. More importantly, Uganda’s donors, who at the time were funding over 50% of the national budget, remained silent about the evident corruption in the privatisation process.²⁶ In this way, matters were swept under the carpet.

²⁴ For more on this, see Mugenyi, J. (1991) IMF Conditionality & Structural Adjustment Under the National Resistance Movement” in M. Twaddle & J. Jansen, *Changing Uganda*, Kampala, Fountain Publishers, pp. 61-77

²⁵ Tangri, R. and A. Mwenda (2001). “Corruption and cronyism in Uganda’s privatisation in the 1990s.” *African Affairs* 100(398):117

²⁶ Ibid. See also, Tangri R., and A. Mwenda (2006) “Politics, donors and the ineffectiveness of anti-corruption institutions in Uganda.” *Journal of Modern African Studies* 44(1): 101-124

At the height of the privatisation corruption scandals in 1999, it was the Police Force, rather than the Privatisation Unit, that became the subject of a commission of inquiry.²⁷ The Police had been seriously condemned by a previous 1986 inquiry into human rights violations for their role in torturing and terrorising civilians during the early eighties. However, the immediate basis for the inquiry was the botching of an investigation into the murder of popular businessman and rally driver, Gerald Kiddu. The Police inquiry was not the first one to be appointed by the NRM, but it was significant due to reasons that will be elaborated in Chapters 5 and 6.

1.3 Research Domain

From 1986 when it took power until the present, the NRM government has appointed over 40 commissions of inquiry to investigate various matters. Of these, 15 were appointed to investigate corruption.²⁸ Of those that were appointed to investigate corruption in public authorities, the Police Force, the Ministry of Defence purchase of military helicopters, the Uganda Revenue Authority and the Ministry of Health mismanagement of the Global Fund were concerned with corruption in public bodies. The inquiry into the Ministry of Education Mismanagement of Universal Primary and Secondary Education Funds has just begun at the time of concluding this study.

²⁷ Whether or not the appointment of the inquiry was intended as a diversionary tactic can only be a matter of speculation. The possible reasons for the inquiry are discussed in Chapter 5.

²⁸ See Appendix for a list of inquiries in Uganda 1962 to present-day.

Commissions of inquiry have attracted widespread public attention and debate in the media and other public fora, and have become a significant component of corruption discourse in Uganda. The process of inquiry, and in particular, the Commissioners' cross examination of public officials, has captivated the public due to the sensational revelations of corruption in government and the public interrogation and shaming of government officials, a hitherto uncommon event in Uganda. Inquiries have become a key feature of corruption-related debate and discussion, and even popular culture. Because of the furore they generate, commissions of inquiry have been momentous events in Uganda and a study of the role they have played thus far is called for.

The hypothesis that is investigated in this study is based on previous scholars' analyses, many of which have denigrated inquiries as symbolic apparatuses appointed by governments to 'white-wash' their image, to forestall criticism, 'reassure the public that something is being done,' buy time and breathing space following a scandal;' or to find scape-goats and apportion blame.²⁹ However, more nuanced analyses such as Gilligan and Pratt, as well as Ashforth's; view them as instruments for the reproduction and legitimation of the state's power in the aftermath of a crisis achieved by investigation, documentation and archiving. In particular, Ashforth calls for a reading of inquiries that

²⁹ Prasser, S. (1982). "Public inquiries: Their use and abuse," *Current Affairs Bulletin* 68(9): 4–12; Sedley, S. (1989), "Public Inquiries: A Cure or a Disease," *Mod. L. Rev.* 52: 469; Hart, J. (1995), "Presidential Lightning Rods: The Politics of Blame Avoidance." *American Political Science Review* 89(4): 1021-1022; Drewry, G. (1996), "'Judicial Inquiries and Public Reassurance'." *Public Law*: 368–83. Wells, C. (1999), "Inquiring into Disasters: Law, Politics and Blame." *Risk Management* 1: 7-20 Elliot, M. (2002). "Public Inquiry: Panacea or Placebo?" *Journal of Contingencies and Crisis Management* 10(1): 14-25.

stresses the symbolic and ritual aspects of their work.³⁰ Sulitzeanu-Keanu says legitimization is achieved through a “providing confirmation” role, when the public “agrees” to demote the importance of the scandal on the public agenda through the government’s willingness to undergo a negative authoritative evaluation.³¹

However, many of these analyses of inquiries are located in “developed countries,” with so-called “modern” democracies. It is therefore justifiable to test the legitimization hypothesis in a “developing” setting such as Uganda, where democratic governance is so fraught with problems that it has been described as a “neo-patrimonial” and “semi-authoritarian.”³² Given the significant political, social and economic differences between the UK and Australia whence the legitimization hypothesis has emerged and Uganda, it is highly likely that testing the hypothesis will offer only part of the picture. Hence it is also necessary to formulate research questions that will aid a broader and deeper exploration of the topic at hand.

- a) What role has the global anti-corruption framework, and in particular, the good governance agenda, played in anti-corruption and the appointment, process and outcome of Ugandan commissions of inquiry into corruption?

³⁰ Gilligan, G. P. and J. Pratt, Eds. (2004). *Crime, Truth and Justice : Official Inquiry, Discourse, Knowledge*. Devon, Willan Publishing.

³¹ Sulitzeanu-Kenan, R. (2006). "If They Get it Right: An Experimental Test of the Effects of the Appointment of UK Public Inquiries." *Public Administration* 84(3): 623-653; Sulitzeanu-Kenan, R. (2006). *Blame avoidance and the politics of public inquiries in the UK, 1984-2003*. PhD Thesis, Division of Social Sciences, Wolfson College, University of Oxford.

³² Tripp, A. M. (2010). *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*. Boulder, Co, Lynne Rienner Publishers.

- b) How has the local political context in Uganda, described as “neo-patrimonial,” affected anti-corruption in general and in particular the appointment, process and outcome of commissions of inquiry in Uganda?
- c) “Why Commissions of Inquiry,” that is to say; what is it about the institution of commissions of inquiry that make governments resort to them during times of crises in governance?
- d) Given the complex dynamics of global and local governance; what role have commissions of inquiry played in anti-corruption and governance in Uganda?

1.4 Justification for the research study

Over the past two decades, there has been an outpouring of research on corruption, its causes, manifestations and impact. There is consensus that corruption has a negative impact on governance and democracy, economic and human development.³³ It delays and distorts economic growth, rewards inefficiency, short-circuits competition, and takes resources away from the poor to the rich, exacerbating inequalities. It slows down investment,³⁴ fuels inflation,³⁵ fosters income inequality,³⁶ lowers the quality of public infra-structure,³⁷ and generally distorts the rule of law and democracy.³⁸

³³ Boswell, N.Z. and S. Rose-Ackerman (1996) “Corruption and Democracy,” *Proceedings of the Annual Meeting (American Society of International Law)* 90: 83-90

³⁴ Campos, J.E., D. Lien, et al (1999) “The impact of corruption on investment: predictability matters,” *World Development* 27(6): 1059-1067

³⁵ Al-Marhubi, F.A., (2000), “Corruption and inflation,” *Economics Letters* 66(2): 199-202.

³⁶ Gupta, S., H. Davoodi, et al (2002), “Does corruption affect income inequality and poverty?” *Economics of Governance* 3: 23-45

³⁷ Gupta S., H. Davoodi, et al (2001), “Corruption and the provision of health care and education services,” in: Jain, A.K. (2001) *The Political Economy of Corruption*, Routledge, London.

Furthermore, corruption is morally disapproved in most societies. Green emphasises that its moral wrongfulness lies in the fact it violates everyday norms against cheating, stealing, deception and disloyalty. Corruption is reprehensible because it involves public officials abusing their positions of public trust by acting in their own interests. Those who voluntarily assume public office, and then set aside public trust for private advantage, engage in morally reprehensible conduct striking at the roots of fairness and democracy.³⁹

Moreover, corruption has been described as a special sub-category of white collar criminal behaviour that involves the unlawful or criminal misuse of power. This use of power as an instrument of crime is cause for concern and should attract powerful stigma. When power itself becomes the instrument of criminality, it should warrant much more disapprobation.⁴⁰ Indeed, Green and Ward opine that corruption is state crime that victimises people indirectly and without their knowledge. It is a “victimless crime” because of the fact that there is usually no complainant to push forward a criminal case. Their analysis resonates with Bayart’s, who opines that the state in some African countries

³⁸ Azfar, O., Y. Lee, et al (2001), “The causes and consequences of corruption,” *The Annals of the American Academy of Political and Social Science* 573(1): 42-56. See also: Anderson C.J. and Y. Tverdova (2003) “Corruption, political allegiances and attitudes towards government in contemporary democracies,” *American Journal of Political Sciences* 47 (1): 91-109.

³⁹ Green, S. (2007), *Lying, Cheating and Stealing: A Moral Theory of White Collar Crime*, Oxford University Press, Oxford. See also Lowenstein, D. (1985) “Political Bribery and the Intermediate Theory of Politics” *UCLA Law Review* 32: 784:807

⁴⁰ Zimring, F.E. and D.T. Johnson (2005) “On the comparative study of corruption,” *British Journal of Criminology* 45(6):793-809.

has become criminalised to such an extent that it is actively involved in promoting and perpetuating criminal activity.⁴¹

Corruption is a violation of human rights. Kofele-Kale advocates for a right to a corruption free society as an individual and collective right.⁴² Similarly, Kumar talks about the fundamental right to corruption-free service.⁴³ These perspectives that link corruption and human rights emphasise the manner in which institutionalised corruption dilutes human rights, creates mass victimisation and threatens the rule of law. Moreover, some scholars such as Meron and Donnelly argue that human rights has now acquired the status of *jus cogens* or international customary law, which, unlike treaty law, is universally binding upon all states.⁴⁴ Bantekas takes it even further by arguing for the re-conceptualisation of corruption as a Crime against Humanity, in view of its devastating effects on the poorest sections of society. He maintains that corrupt acts by Trans-National Corporations (TNCs) and governments are covered by the ICC Statute, Article 30(2) (b) which provides that criminal intent exists “in relation to a consequence, [where] that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” He avers that such “*doles eventualis*” suffices to hold the members of government responsible for crimes against humanity perpetrated against their own people

⁴¹ Green, P. and T. Ward (2004) *State Crime: Governments, Violence and Corruption*. London, Pluto Press. See also Bayart, J.F., S. Ellis et al (1999) *The Criminalisation of the State in Africa*, Oxford: James Currey.

⁴² Kofele-Kale, N. (2000) “The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law,” *International Lawyer* 34(1):149-178

⁴³ Kumar, C.R. (2003) “Corruption and human rights: promoting transparency in governance and the fundamental right to a corruption-free service in India,” *Columbia Journal of Asian Law* 17: 31-72

⁴⁴ Meron T. (1989) *Human Rights and Humanitarian Law as Customary Law*, Clarendon Press: Oxford; and Donnelly, J. (2007) “The relative universality of human rights,” *Human Rights Quarterly* 29(2): 281

in peacetime by placing them in conditions of life, which in the ordinary course of events would deprive them of access to sufficient food and medical care.” Accordingly, embezzlement and procurement fraud should be seen as crimes against humanity due to their devastating effects on human rights.⁴⁵

Thus, due to the negative impact of corruption upon society, it is important to conduct research that will enable further understanding of the phenomenon and the formulation of solutions. Concomitantly, a study on corruption-related inquiries is justified because most analyses of anti-corruption efforts have focused on evaluating permanent Anti-Corruption Commissions in various countries, to the exclusion of temporary *ad hoc* inquiries.⁴⁶ An in-depth, analytical study on judicial inquiries into corruption in Uganda is therefore called for, not only because of the current importance of corruption on the agenda of both global and local governance, but also due to the importance of the institution of the commission of inquiry in governance.

⁴⁵ Bantekas, I. (2006) “Corruption as an international crime and crime against humanity: an outline of supplementary criminal justice policies.” *Journal of International Criminal Justice* 4(3): 466-484

⁴⁶ See Doig, A. (1995). "Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies?" *Public Administration and Development* 15(2): 151-166; Fombad, C. M. (1999), "Curbing corruption in Africa: some lessons from Botswana's experience." *International Social Science Journal* 51(2): 241; Heeks, R. (2007) "Why Anti-Corruption Initiatives Fail: Technology Transfer And Contextual Collision," In *Corruption and Development: The Anti-Corruption Campaigns*, ed. S Bracking, 258-272, Palgrave Macmillan; Doig, A., D. Watt, et al. (2006). "Hands-on or hands-off? Anti-corruption agencies in action, donor expectations, and a good enough reality," *Public Administration and Development* 26(2): 163-172; Doig, A., D. Watt, et al. (2007). "Why do developing country anti-corruption commissions fail to deal with corruption? Understanding the three dilemmas of organisational development, performance expectation, and donor and government cycles," *Public Administration and Development* 27(3): 251-259.

1.5 Scope and objectives the study

The focus of the study is the role of commissions of inquiry appointed on an *ad hoc* basis to investigate corruption in the Ugandan public sector between 1999 to present. Inquiries before that date have been omitted because of the centrality of the concept of good governance to this analysis, a concept whose prominence began in the late nineties.⁴⁷

Inquiries that were appointed to investigate matters that were not specifically corruption scandals have also been omitted, as have those into private sector or para-statal entities such as the inquiry into the closure of commercial banks. These are regarded as outside the remit of the research because current definitions of corruption focus on the public sector; that is, the executive branch of government and its various arms and departments.⁴⁸ I have also omitted the inquiry into the Uganda Peoples' Defence Forces (UPDF) illegal exploitation of the Democratic Republic of Congo, because it is a matter that falls within international law and /or martial law which are outside the domain of this study.

The thesis hopes to contribute to theory and knowledge on anti-corruption, governance and commissions of inquiry. The study seeks to evaluate inquiries, not merely as successes or failures, but to understand the wider political and socio-economic context within which they operate and which they impact.

⁴⁷ See Tan, C. (2011) *Governance Through Development: Poverty Reduction Strategies, International Law and the Disciplining of Third World States*, Oxon: Routledge, pp. 2-3

⁴⁸ See part 1.7 below where the choice of case studies is explained, and Part 1.9 below on definitions and key concepts used in this study.

1.6 Research Design and Methods

A qualitative approach was chosen to enable an in-depth analysis of the various issues involved in this study. Multiple methods including interviewing, focus group discussions and document analysis were employed. The data collected consisted of official documents, scholarly works, records of interviews and discussions, newspaper articles and reports, audio material from radio programmes, as well as blogs and internet discussion forums. This variety of methods and sources was geared towards enabling the researcher to have an in-depth and broad understanding of judicial commissions of inquiry and the global and national context within which they operate.

1.6.1 Case Study Approach

This study is essentially an historical one. Four inquiries were chosen as case studies. As mentioned already, these were selected primarily because they were into public agencies and therefore within the popular definition of corruption as “abuse of public power for private gain.”⁴⁹ The case studies are:

- i. The Commission of Inquiry into the Uganda Police Force (1999; hereafter “Police Inquiry”).
- ii. The Commission of Inquiry into the purchase of military helicopters by the Uganda Ministry of Defence (2000; hereafter “Junk Helicopter Inquiry”);
- iii. The Commissions of Inquiry into Allegations of Corruption in Uganda Revenue Authority, (2002, hereafter URA inquiry)

⁴⁹ The definition of corruption is discussed below, 1.7.2.

- iv. The Commission of Inquiry into the Mismanagement of the Global Fund on HIV/AIDS and Malaria (2005; hereafter Global Fund Inquiry).

1.6.2 Research Procedures

Interviewing

Twelve key informants were purposefully selected for semi-structured in-depth interviews. Five of the interviewees were former Chairs of commissions of inquiry, commissioners, or Lead Counsel. Also interviewed was the Senior State Attorney in the Solicitor General's Chambers who is responsible for drafting terms of reference for judicial inquiries and coordinating the production of white papers based on inquiry reports, and another Senior State Attorney from the Directorate of Public Prosecutions who has been involved in prosecuting people that have been implicated in the findings of inquiries. Interviewees also included an official of the Anti-Corruption Coalition of Uganda, an umbrella NGO that acts as Ugandan Civil Society's focal point for anti-corruption activism; the World Bank Public Sector Specialist as well as the Chief of USAID Uganda Anti-Corruption Threshold Project. The Legal Officer of the Directorate of Ethics and Integrity, the overall coordinating agency for the Uganda government's anti-corruption policies and programmes was also a key informant; as was a former Minister who had been a witness to one of the inquiries.

The number of interviews was influenced by three factors; firstly, the difficulty of contacting key informants such as former commissioners and staff who had worked on no-

longer existent inquiries; secondly, the nature of the topic created reluctance amongst some participants, such as the aforementioned official(s) from the Ministry of Defence who advised not digging up the ghosts of the junk helicopters inquiry; and lastly, the limited time available for the study. Hence, it was decided to utilise focus group discussions and documentary analysis as means of triangulation.

Focus Group Discussions

Two focus group discussions were conducted. They provided a quick way to obtain as much information as possible within the time that was available for the field study.

The first group was randomly constituted of non-elite, “urban poor” people. In Kampala, the capital city of Uganda; there are geographical spaces known as “*stages*,” which are designated stops on *Matatu* (mini-bus) routes. During the day there are always people to be found at *stages*, including “touts” (usually male) who alert the public to the destination of a particular Matatu and encourage people to get on to it; women selling candy and sweets, cigarettes, newspapers and roasted peanuts; as well as “boda-boda” drivers (also male). Boda-bodas are motor-cycles that are used as public transport. The group consisted of some boda-boda drivers, touts and women “sweetie” vendors.

The second focus group was chosen for convenience because it constituted a ready-made focus group of Ugandans working in both private and public sector organisations and who consider themselves separate and outside the ruling elite. This is a group that meets

weekly for social and religious purposes and is known as a “cell.”⁵⁰ Members of the cell group were aged 26-35 years and belonged to various professions including law, banking, academia, agriculture, engineering and medicine. Some of them were public servants while others were employed in the private sector. This group was chosen because it is representative of Ugandans that have a “voice,” that read newspapers and watch or listen to news telecasts that are vocal critiques of the government in newspaper letters to the editor, comments on on-line articles and personal internet blogs. It represents the class with the knowledge, means and ability to demand for more accountable and democratic government in Uganda.

It is a limitation of this study that none of the respondents were rural people, who constitute 80% of the population of Uganda. The distinction between urban and rural populations has implications for the way in which political power is exercised in African countries such as Uganda, as suggested by Mamdani and Ekeh.⁵¹ Mamdani views the post-colonial State as “bifurcated,” with a despotic face for its rural population and a more democratic one for its urban population, a phenomenon he blames on indirect rule’s tendency to generate what he calls “decentralised despotism.” Ekeh sees Africa as having “two publics,” one that is rural, ethnic-based and moral, and an amoral Urban one where public and civil service is undertaken.

⁵⁰ Cells are a significant social phenomenon in Kampala, and are a feature of the growth of Pentecostal Christianity, an increasingly potent force for radical transformation in Africa that unfortunately, has attracted minimum scholarly attention.

⁵¹ Mamdani, M. (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press. See also Ekeh, P. (1975) “Colonialism and the Two Publics in Africa: A Theoretical Statement,” *Comparative Studies in Society and History*, 17(1): 91-112.

However, the exclusion of the rural people in this study was not only due to the time available, but also due to the fact that commissions of inquiry were chiefly urban phenomena that took place in the capital city, Kampala.⁵² Nevertheless, it should be noted that even though the research was only limited to Kampala, the capital city, the findings have national significance because, as Hanna and Hanna observe “urban areas are of enormous political, social, economic and cultural importance to the countries in which they are located... and African towns contain the fuels of socio-economic change.” African towns are... “The centres of polity, society, economy and culture and the hubs of communication and transportation networks... the centres in which a major restructuring of African society as a whole is taking place.”⁵³

Documentary Analysis

Because the study was historical in nature and the corresponding difficulty of obtaining primary sources of information, documents were a staple source of material for the study. In addition to the reports of inquiries where available, mass communication media such as newspapers, magazines, internet blogs and discussion sites were used. Documents were particularly useful because of the politically sensitive nature of the topic as well as the fact that inquiries were *ad hoc* and no longer existent at the time of the study. In particular, the

⁵² Even the Police Inquiry which attempted to be more national by conducting some of its hearings outside Kampala, was limited to the urban areas.

⁵³ Hanna, W. and J. Hanna (2009), *Urban dynamics in Black Africa: an interdisciplinary approach*, Aldine De Gruyter, pp. 2-3.

impossibility of obtaining the Junk Helicopter Inquiry Report which was never published by the government necessitated newspapers as the only way of piecing the story of that inquiry together. In addition, newspaper reports on inquiry proceedings can provide descriptions of mood, atmosphere and dialogue that may not have been included in the judicial inquiry report. Newspapers also provide insights into other co-existing phenomena that have proved useful in placing inquiries within the larger political, economic and social context.

Internet blogs, discussions and comments made below on-line newspaper articles were crucial in obtaining peoples' views about the topic of corruption and inquiries. They provided a readily available source of views and opinion that are in the public domain and that could therefore be accessed without the need for obtaining consent and the effort of setting up appointments and actually conducting an interview especially in view of participants' reluctance to be interviewed face-to-face and the time limitations for the study.

Audio-visual material

Recordings of radio talk shows and discussions proved crucial to obtaining views on corruption, inquiries and the political context that prevailed during their tenure. Because of the time lapse between the inquiries and the timing of this study, radio recordings provided a fast and efficient way of generating data for the study.

Ethical Considerations

Corruption is a politically volatile and sensitive topic. Accordingly, respondents were duly informed of the nature and purpose of the study, in writing where possible and orally at the beginning and end of interviews and focus group discussions. Participants' consent to participate in the study was obtained orally. Where there was reluctance to participate in the study, for example, regarding the Junk Choppers inquiry, other sources such as newspapers were used.⁵⁴ Respondents' anonymity has been preserved by referring to them as "officials," or by aliases or first names only.⁵⁵ The researcher has made an effort to limit the influence of personal bias on the research findings by declaring her interest and involvement in the subject of research.⁵⁶

Problems encountered during the research study

One of the most significant challenges was researching institutions that no longer existed, which implied a lack of primary resources and institutional memory. This was further hampered by a poor record-keeping culture in Uganda, evidenced by the fact that some of

⁵⁴ For example, when I asked for information about the Junk Helicopter Inquiry, one respondent asked why I wanted to "awaken sleeping dogs." Another respondent I asked about the same inquiry told me that all records pertaining to that inquiry are unavailable in the Ministry of Defence and advised me to refrain from asking about it.

⁵⁵ Nevertheless, respondents whose comments I have obtained from the public domain, such as newspaper articles, blogs, or facebook are referred to by name.

⁵⁶ I was Assistant Lead Counsel for the Commission of Inquiry into Allegations of Corruption in Uganda Revenue Authority from 2002-2003. My interest in this area and this study arose from my experiences and observations on that Commission of Inquiry. I have taken cognisance of the fact that as a Public Officer, I am bound by the Ugandan Public Service Code of Ethics not to divulge any official information that came to my knowledge as a result of my position without the explicit consent of my supervisor. In this regard, both the Secretary and Chair to the Commission were fully aware of my study and both were respondents in this study. A further complication is that the report and proceedings of that Commission of Inquiry were nullified by order of the High Court of Uganda in *Annebritt Aslund versus the Attorney General* (High Court Miscellaneous Cause No. 60 of 2004, unreported). Accordingly, any data from the said commission of inquiry that is included in this study is from news articles or was obtained through interviews with other former staff.

the inquiry reports, including those in the public domain such as the Global Fund Report, could not be readily obtained in the Ministry of Justice and had to be obtained through personal contacts. I encountered reluctance and cynicism from respondents, particularly with regard to the Junk Chopper Inquiry whose report was never published and a copy of which I was unable to obtain.⁵⁷

1.7 Definitions and key concepts of the study

1.7.1 Commissions of Inquiry

A commission of inquiry as conceptualised in this study is an *ad hoc*, temporary body established by the president or a minister by statutory instrument, to inquire into any matter of public concern under the Commissions of Inquiry Act of Uganda, section 2 of which provides thus:

It shall be lawful for the President to issue a Commission appointing one or more commissioners and authorising such commissioners, or any quorum of them therein mentioned, to inquire into the conduct of any officer in the public service of Uganda, the conduct of any chief, the conduct or management of any department of the public service or of any public or local institution, or into any matter in which an inquiry would be for the public welfare.⁵⁸

⁵⁷ The proceedings were however reported in the newspapers. In addition, excerpts of the report were published by *The Monitor* newspaper.

⁵⁸ Cap. 166, Laws of Uganda.

The Act does not specify that a judge should chair the commission, although it has been the usual practice since independence to appoint judges as chairs in most cases.⁵⁹ Inquiries are allowed to determine their own procedure and usually adopt an inquisitorial approach to fact-finding, inviting the public to come forward with information and submit memoranda.⁶⁰ They have the powers of the High Court to compel the attendance of witnesses and the production of documents. At the end of the inquiry they are required to make a report with recommendations and submit it to the President.⁶¹ They usually take place in a blaze of publicity: keenly watched and followed by the public.

1.7.2 Corruption

Most scholars, international organisations and agencies involved in the fight against corruption have adopted Nye's definition:

Corruption is behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behaviour as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and

⁵⁹ See Appendix, List of Commissions of Inquiry: Chairpersons.

⁶⁰ Section 9 of the Commissions of Inquiry Act, 1964.

⁶¹ Section 7, Ibid.

misappropriation (illegal appropriation of public resources for private-regarding uses).⁶²

However, the limitations of this definition have been acknowledged. These include: the pre-eminence given to public sector corruption as opposed to private sector corruption, ignoring the linkages that may exist between the two; the difficulty of distinguishing between private and public interests in some contexts; and the failure to denote whether all such behaviour is legal or illegal.⁶³

Thus, attempts have been made to improve the definition. For example, Transparency International defines corruption as behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them. This would include embezzlement of funds, theft of corporate or public property as well as corrupt practices such as bribery, extortion or influence peddling.⁶⁴

The United Nations Manual on Anti-Corruption Policy defines it “as an abuse of (public) power for private gain that hampers the public interest... it entails a confusion of the private with the public sphere or an illicit exchange between the two spheres. In essence,

⁶² Nye, J. (1967). "Corruption and Political Development: A Cost-Benefit Analysis." *American Political Science Review* 61(2): 417-427

⁶³ See for example, Williams' critique of Nye, in Williams (1987) op. cit..

⁶⁴ Jeremy Pope, (2000) *Confronting Corruption: The elements of a National Integrity System*, Transparency International Sourcebook, available at <http://www.transparency.org/publications/sourcebook>, last accessed 20/02/2011.

corrupt practices involve public officials acting in the best interest of private concerns (their own or those of others) regardless of, or against, the public interest.”⁶⁵

It is because the definition focuses on “public” officials and agencies that I decided not to include two inquiries that took place during the chosen time frame (1999-2007); the commission of inquiry into the Uganda Military’s involvement in the illegal exploitation of the Congo, and the inquiry into the closure of commercial banks, which were private entities (even though the government had shares in some of them).

1.8 Analytical framework

Joseph writes about the difficulties of theorising African politics:

The student of democratization in Africa after 1989 does not have a ready-made explanatory framework or set of defining conditions that can simply be tested in the African context. Developments in Africa oblige us to approach seemingly settled issues anew and to adopt a critical approach regarding such fundamentals as the meaning of democracy and democratization. Students of African transitions must also become more actively engaged in formulating theory, heretofore dominated by students of other areas of the world. To be avoided is the passive application to Africa of externally devised frameworks, as well as the analysis of African politics solely within Africa-derived paradigms.⁶⁶

⁶⁵ United Nations Office for Drugs and Crime (UNODC), (2001). *United Nations Manual on Anti-Corruption Policy*. Centre for International Crime Prevention, Vienna, Austria.

⁶⁶ Joseph, R. (1997), “Democratization in Africa after 1989: Comparative and Theoretical Perspectives,” *Comparative Politics* 29(3): 363-382, at p. 364.

The task of formulating a theoretical framework for analysing the role of commissions of inquiry in Uganda is therefore a difficult one. Nevertheless, this thesis attempts to “connect qualitative research to the hopes, needs, goals and promises of a free democratic society,” as Denzine and Lincoln have emphasised.⁶⁷ This is no simple task, given that much of the existing research on Africa can be regarded as coming from the standpoint of “afro-pessimism.” Writing “in defence of afro-pessimism,” at the end of the 1990s, Reiff said that “aid has clearly had a far more minimal effect on Africa's development than either donor countries or recipients ever imagined,” and went on to describe a lot of what has gone wrong.⁶⁸ And yet, writing at about the same time, Gordon and Wolpe called for a different perspective, emphasising that “Africa is not, as it is so consistently depicted on our television screens, on the edge of an abyss of futility and despair but at the beginnings of a renewal that, in many countries, is yielding a new sense of hope and possibility.” They gave many examples, and said about Uganda, that “The years of Idi Amin's brutal tyranny are now but a fading memory in a politically robust and economically dynamic Uganda.”⁶⁹

Optimism should not, however, give way to delusion, as emphasised by Callaghy, who says that

A realistic, even if not always agreeable, assessment – one that takes into account the synergy between the vision (and the policies that flow from it) politics and

⁶⁷ Denzin, N. K. and Y. S. Lincoln (2008). *The Landscape of Qualitative Inquiry*. Thousand Oaks, California, Sage Publications, pp. 3-4

⁶⁸ Reiff, D. (1999) “In Defense of Afro-Pessimism,” *World Policy Journal* 15(4): 10-22, at p.11.

⁶⁹ Gordon, D.F., and Wolpe, H. (1998) “The Other Africa: an end to Afro-pessimism,” *World Policy Journal* 15(1): 49

structure, one that avoids unproductive illusions but does so without underestimating or undervaluing the creativity of human agency –does better service to Africans as they confront their serious problems...⁷⁰

In line with the above, Santos' analysis of emancipation and emancipatory relationships provides a useful analytical framework for this research study. He talks about social processes where power constellations are both boundary setting and constraining as well as path-breaking and enabling. He maintains that all the dualisms contained in power relations, such as thinkable-unthinkable or allowed-forbidden, are both path-breaking and boundary setting, but can never operate in both modes simultaneously or with the same intensity. It is through the cumulative exercise of enabling/path-breaking mode power-relations, that it is possible to alter the constraints and change distributions so as to achieve emancipation.⁷¹ The analysis herein therefore aims at highlighting the complex ways in which the various aspects of global and national governance, including commissions of inquiry, have been path-breaking despite being birthed in hegemonic settings. It will highlight the agency of the Ugandan people in their search for more democratic and accountable government.

⁷⁰ Callaghy, T.M. and J. Ravenhill (1993) Vision, Politics and Structure: Afro-Optimism, Afro-Pessimism or Realism? in Callaghy T. and J. Ravenhill (eds) *Hemmed in: responses to Africa's economic decline*, Columbia: Columbia University Press; p. 3.

⁷¹ Santos, de Sousa B. (2002), *Towards a new legal common sense: law, globalisation and emancipation*, Cambridge: Cambridge University Press, pp. 359-362

1.9 Thesis Outline

The introductory chapter gives a background to the research study by briefly describing the rise of anti-corruption and judicial inquiries in Uganda. It states the research problem, hypotheses, questions, justification for and the objectives of the study. The factors that influenced the choice of a qualitative research paradigm are explained, as are the research procedures such as interviews, focus groups and document analysis that were utilised to obtain data.

Chapter Two looks at the global framework against corruption and its impact on anti-corruption in Uganda. The World Bank, IMF and bilateral donors such as USAID and DFID have been the key proponents of the good governance discourse, which they have sought to enforce in countries such as Uganda through the mechanism of aid conditionality. It notes that enforcement of conditionality has been hampered by self-interest on the part of donors. Furthermore, enactment of international treaties against corruption, the growth of international civil society and the international NGOs such as Transparency International has been significant in the proliferation of anti-corruption norms. The chapter examines how the dynamics of the global anti-corruption framework have influenced the phenomenon of commissions of inquiry into corruption in Uganda.

Chapter Three looks at the manner in which the Uganda government has adopted and adapted to the good governance discourse, by agreeing to its formal requirements, and yet utilising various means to subvert it. Thus, Uganda is able to show that it is a good

governor by having a “near perfect” array of anti-corruption laws, policies and institutions, that are nevertheless inadequately enforced. The chapter analyses the “neo-patrimonial” patronage and clientelistic system that defines political organisation in Uganda as the cause of systemic corruption as well as the reason for anti-corruption failure. It is suggested that commissions of inquiry arise out of the contradictory aim of being a good governor whilst insulating key personalities in the patronage system from criminal prosecution in order to preserve the regime.

Using examples from various countries, chapter four looks at the history, role, structure and functions of inquiries as *ad hoc* investigatory devices usually appointed in times of scandal and crisis. It aims to illustrate that their unique inherent features, such as quasi-judicialness, public and media participation in an inquisitorial fact-finding process, render them the ideal instrument of power that the Uganda government utilises to be a good governor whilst ensuring minimum disruption to the patronage system that ensure regime survival. It analyses the legitimisation theory that has been proposed as explaining the role of inquiries in governance. Thus, inquiries help to reiterate the rational acceptability, competency and effectiveness of the state following a crisis. Some scholars have proposed that legitimisation is achieved through the inquisitorial fact-finding process, which allows for public scrutiny of the crisis or scandal and hence facilitates the public to make or justify their own conclusions about who should be blamed for it.

Chapter Five looks at judicial commissions of inquiry into corruption in Uganda during the period 1999-2007. It is a descriptive analysis of the terms of reference, proceedings, key findings and outcome of four judicial inquiries into corruption in Uganda – the police, junk helicopters, Uganda Revenue Authority and Global Fund inquiries.

Chapter six presents respondents' views on commissions of inquiry in Uganda, who almost unanimously agree that they are appointed as public relations stunts to show that something is being done about corruption whereas nothing is being done. The analysis of the responses emphasises that while this is partly true, it would be more correct to view them as being aimed at achieving a complex set of political aims related to the survival of the regime. Key among these is legitimating the government as a good governor by exhibiting democracy, public accountability, judicial independence and media freedom. I suggest that ultimately, commissions of inquiry are part of the complex process by which the good governance discourse, with its potential and limitations is internalised and reproduced in Uganda.

The final chapter concludes by analysing the “going out of style” of inquiries in Uganda, summarising the implications that inquiries have had for governance and democracy in Uganda.

Chapter 2

The Global Anti-corruption Framework: “Good Governance,” International Non-Governmental Organisations (INGOs) and International Law

2.1 Introduction

This chapter is aimed at locating commissions of inquiry into corruption within the global anti-corruption framework, signified mainly by the good governance discourse. Rita Abrahamsen emphasises that the transitions in governance that characterised the late 1980s and early 1990s in Africa were profoundly influenced by Africa’s interaction with and place in the international system. She points out that “explaining the transitions with reference to domestic factors only is far too simplistic.” She notes that globalisation has worn down the integrity of the nation state as an autonomous, independent actor. Central agencies of the State, including government ministries, central banks and executive offices are increasingly linked to each other and to international institutions such as the World Bank and the IMF. In this global order, States are obligated to adopt policies that reflect international and domestic imperatives. It is on this basis that the analysis of the global anti-corruption framework is considered to be a crucial starting point for the present study.⁷²

The chapter analyses the techniques that have been employed to promote anti-corruption in developing countries such as Uganda. The first part of the chapter looks at the role of

⁷² Abrahamsen, R. (2000). *Disciplining Democracy: Development Discourse and Good Governance in Africa*, Zed Books Ltd, p. 7

good governance discourse in promoting anti-corruption. The second part looks at global civil society, particularly Transparency International's Corruption Perception Index (CPI). The third part considers the role of international and regional anti-corruption treaties and conventions. Part four analyses the role of Multi-national Enterprises (MNEs) in promoting anti-corruption. The chapter concludes by noting that the IFIs and bilateral donors have promoted an anti-corruption discourse which is beset by contradictions and inconsistencies. These contradictions in the international framework are carried over to the national one, where they are internalised and reproduced in a similarly contradictory fashion, an issue that will be taken up in the next chapter.

2.2 The “good governance” discourse and anti-corruption

2.2.1 The genesis of the good-governance agenda

Although corruption in public office has been a problem since the earliest instances of formal government, it is only during the latter part of the twentieth century that both national governments and the global community at large have taken a keen interest in it. As earlier mentioned, the global movement against corruption gathered momentum in the early 1990s and was fuelled by International Financial Institutions (IFIs) such as the World Bank (WB) and International Monetary Fund (IMF). Governance issues had come to the fore in the WB's thinking by the end of the 1980s as a result of its repeated failure

to bring about tangible development in Africa.⁷³ This failure of the Structural Adjustment Programmes of the 1980s was quickly attributed to the inefficiency and authoritarianism of the African State, rather than to the nature of structural adjustment itself.⁷⁴

Thus, the global conditions were ripe for the emergence of governance-related conditionality in IFI lending. Abrahamsen emphasises the need to view the emergence of good governance discourse as historically contingent upon the end of the cold war, coinciding with the failure of structural adjustment, now blamed on African governments rather than IFIs themselves. An opportunity was thus presented for good governance to emerge as the dominant hegemonic discourse, geared towards liberating the poor, whose poverty had now been recast as a result of “bad governance” and not necessarily the poor design of structural adjustment.⁷⁵ It is also important to note that the historical moment of the emergence of good governance coincided with rising pro-democracy demands for change in many African countries. Abrahamsen argues that these demands had always been present but not heard during the Cold War, and only became audible when the end of the cold war also signified the end of the West’s geo-strategic support for many African dictators. These pro-democracy protests in many countries proved to be important in providing legitimacy for the introduction of the good governance agenda, as the agenda

⁷³ WorldBank (1989). *Sub-Saharan Africa: From Crisis to Sustainable Growth*. A Long Term Perspective Study. Washington D.C., World Bank Publications.

⁷⁴ Abrahamsen, op. cit., p. 42. See also, Polzer, T. (2001), *Corruption: Deconstructing the World Bank Discourse*, Development Studies Institute, Working Paper 01-18, London School of Economics.

⁷⁵ Abrahamsen, ibid. See also, Polzer, ibid.

now claimed itself as being representative of the wishes of the ordinary people of Africa, whom it sought to “empower” as well as liberate.⁷⁶

Following in the footsteps of the IFIs, aid agencies including the United States Agency for International Development (USAID), the UK Department for International Development (DFID) (now UK-AID), Danish International Development Assistance (DANIDA) and the United Nations Development Programme (UNDP) quickly followed suit in making anti-corruption a key issue in their relationship with recipient countries. It should be noted that at the local level, IFIs and bi-lateral donors usually act in concert, through “sector wide approaches” (SWAPs), “basket funding” and umbrella groupings that seek to harmonise the policies of various donors.⁷⁷ . In Uganda, there is a Donor Democracy and Governance Group (DDGG) that brings together the Governments of Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Japan, Netherlands, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland and the United States of America, as well as the European Commission, The World Bank and the United Nations Development Programme. Their stated objective is to “deepen democracy and promote human rights and good governance.”⁷⁸ The subsequent analysis therefore does not venture into the nuances between various bilateral donor agencies or the difference between them and IFIs, but considers them as homogenous in their intentions and actions with regard to good

⁷⁶ Abrahamsen, *ibid.*, p. 52.

⁷⁷ For more on “SWAPs,” see Foster, M. (2000). *"New Approaches to Development Co-operation: What can we learn from experience with implementing Sector Wide Approaches?"* WORKING PAPER-OVERSEAS DEVELOPMENT INSTITUTE; and Jeppsson, A. (2002). "SWAp dynamics in a decentralized context: experiences from Uganda." *Social Science & Medicine* 55(11): 2053-2060.

⁷⁸ See Uganda Donor Democracy and Governance Group (DDGG), *Memorandum of Understanding*, 2003, available at <http://www.u4.no/document/showdoc.cfm?id=52>, last accessed 20 February 2011.

governance. Indeed, their policies and actions are frequently referred to as the “Washington Consensus,”⁷⁹ “neo-liberal consensus” and so on.

2.2.2 The meaning of “good governance”

The terminology of “good governance” forms part of a wider development discourse espoused and propagated by the World Bank, IMF and other donors.⁸⁰ By 1997, the World Bank and IMF had concretised what they meant by “good governance” and this was reflected in that year’s World Development Report titled “*The State in a Changing World*.” The report was “devoted to the role and effectiveness of the state: what it should do, how it should do it, and how it can improve in a rapidly changing world.”⁸¹ In it, the World Bank argued for a minimalist state that plays a facilitator role in encouraging and complementing the activities of private businesses and individuals.

An analysis of the World Bank’s ideas as presented in the afore-mentioned World Development Report reveals that “good governance” is a two pronged concept based on the one hand, on better administration and management of public resources and on the

⁷⁹ Williamson, J. (1989). “What Washington means by Policy Reform;” in *Latin American Readjustment: How Much has happened*; by J. Williamson. Washington, Institute for International Economics.

⁸⁰ The concept of “discourse” has been explained by Foucault as referring to “a particular way of thinking, speaking and doing.” He encourages reflection on what factors influence the prominence of a particular discourse at a particular point in time, especially institutional practices. Thus discourses are used in a wider social process of legitimating power through the construction of truth and knowledge. See Foucault, M. (1972) *The Archaeology of Knowledge*, New York, Pantheon.

⁸¹ World Bank (1997) *World Development Report: The State in a Changing World*, at http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=477872&piPK=64165421&menuPK=64166093&entityID=000009265_3980217141148, accessed 29 January 2011.

other hand, better politics of openness, accountability and participation.⁸² To adopt the World Bank's use of the term, good governance is the way power is exercised through a country's political, economic and social institutions in a manner that is participatory, transparent, accountable, effective and equitable.⁸³ Good governance has been conceptualised by the WB to "rest upon four pillars;" viz accountability, transparency, the rule of law and participation.⁸⁴ Observance of human rights and promotion of multi-party democracy are also key features of the agenda. Democratic reform was encouraged, if not overtly by IFIs, by the bi-lateral donors, because greater political competition is believed to lower levels of corruption.⁸⁵ Thus many African countries such as Kenya, Uganda, Tanzania, Zambia and Malawi going to the polls for the first time in decades during the early to mid 1990s. It is important to note however, that Uganda was for many years, able to convince donors to continue with its own version of "no-party" democracy known as the Movement system, on which I elaborate in chapter three. The elections held in 1995 and 2001 were based on individual merit as opposed to multi-party. In the absence of multiparty politics, the Ugandan government was constantly required to prove its "democraticness." This had implications for the strategy that was used to respond to corruption scandals, where commissions of inquiry proved to be crucial.

⁸² Doornbos, M. (2001). "'Good Governance:' The Rise and Decline of a Policy Metaphor?" *Journal of Development Studies* 37(6): 93-108

⁸³ Weiss, T. G. (2000). "Governance, good governance and global governance: conceptual and actual challenges." *Third World Quarterly* 21(5): 795-814.

⁸⁴ Craig, D. and D. Potter (2007). *Development Beyond Neoliberalism? Governance, Poverty Reduction and the Political Economy*, Routledge. See also Tamanaha, B. (2004) *On the rule of law: history, politics, theory*. Cambridge University Press, Cambridge.

⁸⁵ Shen, C. and J. B. Williamson (2005). "Corruption, Democracy, Economic Freedom, and State Strength: A Cross-national Analysis." *International Journal of Comparative Sociology* 46(4): 327

2.2.3 Good governance and anti-corruption

Anti-corruption has always been and remains one of the most prominent aspects of the good governance discourse, perhaps due to the synonymity between corruption and “bad governance.” In addition, corruption is of special concern to donors when it involves theft and embezzlement of government funds, most of which come from donors. This was clearly brought out in a 2003 statement of Uganda’s development partners (donors) on Governance and Anti-Corruption:

The prevalence of corrupt practices – both administrative and grand – is of grave concern to your development partners. According to the Auditor General’s annual reports to Parliament around Ush200 billion is not accounted for, lost, or misused each year. This represents 7.5% of the GOU budget, which is lost through poor financial management or corruption each year. It is becoming increasingly difficult for us, as donors, to explain this to our taxpayers at home who currently provide just under half of the Government of Uganda budget.⁸⁶

Donors’ emphasis on anti-corruption is further reflected in the projects they initiated to tackle corruption. In Uganda, DANIDA established a Human Rights and Good Governance Office (HUGGO), with an anti-Corruption programme, whose main function is to liaise with Uganda government agencies specifically on the issue of corruption.⁸⁷

⁸⁶ Statement of Uganda’s Development Partners on Governance and Anti-Corruption, Consultative Group Meeting Kampala, April 2003; available at <http://www.u4.no/document/showdoc.cfm?id=51>, last accessed 02 December 2010.

⁸⁷ Ministry of Foreign Affairs of Denmark, Embassy of Denmark, Kampala (2009) “Development Policy: Anti-corruption,” <http://www.ambkampala.um.dk/en/menu/DevelopmentPolicy/Goodgovernance/Anticorruption/> accessed 18 January 2011.

USAID also established an Anti-Corruption Threshold Project, with the specific goal of strengthening the Uganda Government's anti-corruption capacity.⁸⁸

The importance of corruption in international development discourse has also been attributed to the vibrant anti-corruption campaign launched by Transparency International⁸⁹ at the same time as the emergence of the discourse, that is, during the 1990s. Also, corruption is the key factor in risk analysis, lending decisions and portfolio supervision.⁹⁰ Emphasis on anti-corruption has also been linked to the fact that the mandates of the WB and IMF prevent them from advancing an overtly political agenda. Hence, good governance had to be couched in the administrative aspects of government – public sector reform, transparency and accountability.⁹¹

2.2.4 Good governance, civil society participation, judicial independence and media freedom

Aside from anti-corruption, other elements of the good governance discourse sought to institute grass roots monitoring of public services through increased civil society participation in governmental processes. This led to the unprecedented expansion of the

⁸⁸ See Development Assistance Grant Agreement between the US Government (Millennium Challenge Account) and the Government of Uganda for strengthening Uganda's capacity to fight corruption, <http://www.mcc.gov/documents/agreements/daga-uganda.pdf>, accessed 18 January 2011.

⁸⁹ Transparency International is itself historically linked to the World Bank, having been founded by former World Bank employee Peter Eigen. It also played a key role in shaping the Bank's anti-corruption policy. A more detailed discussion of the role of Transparency International can be found part 5 of this chapter.

⁹⁰ Kapur, D. and R. Webb (2000). *Governance-related conditionalities of the international financial institutions*, United Nations Conference on Trade and Development (UNCTAD) G-24 Discussion Papers Series, No. 6, <http://www.unctad.org/en/docs/pogdsmdpbg24d6.en.pdf>, accessed 17 January 2011; pp.2-3.

⁹¹ Crawford, G. (2001). *Foreign aid and political reform: a comparative analysis of democracy assistance and political conditionality*, Palgrave Macmillan, p. 6.

NGO sector in countries such as Uganda, with NGOs being established to take advantage of donor funding directly channelled to them to encourage their participation in governance. Judicial independence was emphasised as being indispensable to the rule of law and democracy. Donors also supported liberalisation and strengthening of the media and civil society as key components of efforts to improve accountability.⁹² This led to an explosion of mass media, characterised by the establishment of private newspaper publishers, FM radio stations and TV Stations. The impact of these factors on Ugandan society and their relevance to the construction of commissions of inquiry is important to this study, and will be discussed in greater detail in subsequent chapters.

2.2.3 Good-governance and political conditionality

The technique by which the discourse of good governance was transplanted to developing countries such as Uganda was conditionality. These are conditions on loans to ensure that developing country governments conduct their affairs in line with a set of principles defined under the good governance discourse. Conditionality in IFI terminology means “a mutual arrangement, by which a government takes, or promises to take, certain policy actions, in support of which an international financial institution or other agency will provide specified amounts of financial assistance.”⁹³ “It is a complex covenant written into a loan agreement... that can be thought of as a substitute for collateral.”⁹⁴ Donors provide

⁹² Staphenurst, R. (2000). *The Media's role in curbing corruption*, World Bank Institute, pp. 10-11.

⁹³ Killick, T., R. Gunatilaka & A. Marr (1998). *Conditionality: The Political Economy of Policy Change*, London: Routledge, p. 6

⁹⁴ Khan, M. S. and S. Sharma (2003). "IMF Conditionality and Country Ownership of Adjustment Programs." *The World Bank Research Observer* 18(2): 227-248

incentives for reforming the macro-economic policy environments of poor countries, through a carrot (more aid) and stick (reduced aid) – approach. Thus, aid allocations are supposed to take into account the efforts made to improve governance, including anti-corruption efforts.⁹⁵ Aid is geared towards positively supporting democratisation, with concomitant restrictions in aid for human rights violations or reversals in the democratic process. In practice, aid is released in tranches, such that further disbursements can be withheld in the event of unsatisfactory performance by the recipient. Under other arrangements that do not involve tranching, unsatisfactory performance can be punished by declining new aid.⁹⁶ Doornbos observes that good governance discourse was geared towards “establishing new institutional patterns of global hegemony, by compelling state and policy structures in recipient countries to conform to norms set by global institutions.”⁹⁷ Tan refers to the phenomenon as a new type of “social contract” between third world countries and donors.⁹⁸

Conditionality is therefore the means that IFIs use to address the risk of non-compliance by borrowers arising from accident or opportunism, to “plug leaks in the ship of the state.”

Whereas financial markets can resort to mechanisms such as collateral and higher risk

⁹⁵ Santiso, C. (2001). "Good Governance and Aid Effectiveness: The World Bank and Conditionality." *Georgetown Public Policy Review* 7(1): 1-22

⁹⁶ Killick, op. cit., at 133.

⁹⁷ Doornbos, M. (2003), ““Good Governance”: The metamorphosis of a policy metaphor,” *Journal of International Affairs* 57(1): 3-17, at p.6.

⁹⁸ Tan., C. (2011) op. cit., pp. 3-5

premiums, these alternatives are not available to IFIs because they serve a broader public purpose and cannot resort to such restrictions.⁹⁹

In practice, conditionality is expressed in formal letters of intent or letters of development policy from the borrowing government to the IFI in question. The letters describe the economic background to the credit requested and its objectives.¹⁰⁰ The content of letters of intent is the same as that of Poverty Reduction Strategy Papers (PRSPs),¹⁰¹ which provide a common over-arching framework for development policy and planning in recipient countries. PRSPs are the basis for all foreign lending to developing countries. Security and good governance are some of the main pillars of the PRSP in recognition of the fact that “improvements in macroeconomic performance may not automatically translate into poverty reduction unless sufficient attention is given to the administrative machinery, fiscal transfer mechanisms, the institutional and legal framework and issues of transparency and accountability in the public sector.”¹⁰²

PRSPs, though similar, are drafted at national level and must be nationally “owned.” Yet, the insistence that PRSPs are government owned has been challenged. Tan says that the concept of agency in PRSPs is only nominal at best, and is geared towards legitimising the

⁹⁹ Kappur and Webb, op. cit, at p. 2.

¹⁰⁰ Killick, at p. 8.

¹⁰¹ For more on PRSPs, see Tan, C. (2011), op. cit. See Also, Tan, C. (2007) “The poverty of amnesia: PRSPs in the legacy of structural adjustment,” in Stone, D. and Wright, C. (eds.) *The World Bank and Governance: A Decade of Reform and Reaction*, London: Routledge, pp. 147-67.

¹⁰² Government of Uganda, (2002) *Uganda Poverty Reduction Strategy Paper Progress Report 2002*, p. 34.

inequity of the donor-recipient relationship with its problematic colonial history.¹⁰³

Similarly, the Bretton Woods Project, a network of British NGOs that monitors the World Bank and IMF, insists that the process of PRSP making negates the idea of agency because the final document must be approved by the IFIs before lending is agreed.¹⁰⁴ Moreover, once the PRSP is in place, regular implementation progress reports must be submitted to the World Bank in order for further tranches of aid to be released.

2.2.4 Anti-corruption in the PRSP: the significance of commissions of inquiry

Anti-corruption has therefore been a key component of Uganda's PRSPs over the years. The Poverty Eradication Action Plans of the early 2000s identified reducing corruption as one of the components of the priority areas for action titled "Making government structures affordable, transparent and efficient." The other priorities for good governance were: ensuring respect for human rights; pursuing democratisation; and providing a good judicial system.¹⁰⁵ Investigation and action against corruption was one of the ways in which corruption was sought to be reduced, and Commissions of Inquiry a key method of investigation, "especially where the situation is not amenable to normal systems of auditing and investigation."¹⁰⁶

¹⁰³ Tan, C., op. cit.

¹⁰⁴ See *PRSPs: A Rough Guide*, April 2003, <http://www.brettonwoodsproject.org/topic/adjustment/index.html>, last accessed 8 December 2010.

¹⁰⁵ The past tense is used here because Uganda's PRSP has now been re-baptised as the *Uganda Development Plan* and is no longer referred to as the Poverty Eradication Action Plan.

¹⁰⁶ Government of Uganda, Ministry of Finance, Planning and Economic Development (2005) *The Poverty Eradication Action Plan*, 2004/5 – 2007/8; p. 131.

In 2002, the Uganda government's PRSP progress report to the World Bank contained the self assessment that:

...progress on the fight against corruption has been rather slow; there has been very slow progress in designated "high profile" corruption cases; important legislation has not been passed and scandals around procurement and financial management continue to surface...¹⁰⁷

The government then went on to salvage itself, saying:

Progress has however, been made in some core areas... the IGG Act is now passed; recommendations from the public inquiry into the Police are being taken forward.... New commissions of inquiry have probed the Ministry of Defence purchase of 'junk helicopters' and the exploitation of natural resources in the Congo.¹⁰⁸

The following year (2003), the government reiterated that it had made progress in anti-corruption:

The government has successfully undertaken efforts to address corruption, for example, Commissions of Inquiry such as the Sebutinde Commissions on army procurement and revenue collection have been instituted as explicit efforts to end corruption in government entities.¹⁰⁹

This shows clearly that public inquiries into corruption have been one of the ways through which the Uganda government has tried to show that it is complying with good governance conditionality. Concomitantly, the threat to enforce conditionality has frequently revolved around the failure by the government to implement the

¹⁰⁷ Ibid., p. 40

¹⁰⁸ Ibid.

¹⁰⁹ GoU, MOFPED, (2003) *Uganda Poverty Status Progress Report*, p. 65

recommendations of inquiries into corruption, particularly recommendations regarding prosecution of the culprits:

On behalf of Uganda's development partners, let me first express our appreciation for the extent to which we and the Government of Uganda (GoU) clearly agree that the Poverty Eradication Action Plan cannot be implemented in a sustainable manner without addressing the issues concerning Good Governance and the fight against Corruption.... We would like to highlight ... action areas on which to focus our continued dialogue on the fight against corruption...

The fourth key action area is the publication and follow -up to Government's commissions of inquiry and anti-corruption reports. Government has commendably vested a great deal in a series of Commissions of Inquiry that address very important issues of governance, corruption and public sector performance. Specifically, we are speaking of the Porter Commission into the plundering of resources in the DRC and the Sebutinde inquiry into malpractice at the URA. We welcome the Minister for Ethics and Integrity's recent pledge that action would be taken soon with regard to the Sebutinde junk helicopter report. Nevertheless, we would ask you to be diligent and expeditious in following through on the findings and recommendations of each of these three Commissions, making their reports available to the public and initiating administrative sanctions, dismissals and legal proceedings where appropriate. Select reports of commissions of inquiry should be published within six months of work completion in tandem with a GoU White Paper on proposed action.¹¹⁰

¹¹⁰ *Statement of Uganda's Development Partners on Governance and Anti-Corruption*, Consultative Group Meeting Kampala, April 2003; available at <http://www.u4.no/document/showdoc.cfm?id=51>, last accessed 02 December 2010. A detailed discussion of inquiries is contained in Chapters 5 and 6.

Similarly, a 2005 Joint Staff Assessment (JAF) Advisory Note by the IMF and IDA, in the section on good governance and security as pre-conditions for economic growth and poverty eradication noted:

The progress in implementing the recommendations of various Commissions of Inquiry has been very slow and warrants specific actions.¹¹¹

It is however notable that donors have stopped short of actually threatening to enforce conditionality by reducing aid. They issue warnings and reprimands, but do not actually reduce aid. Nevertheless, it is clear that commissions of inquiry have been central in good governance discourse in Uganda. It is interesting that the government justified reliance on them as being suitable “where the situation is not amenable to normal systems of auditing and investigation.” This sounds lame because, as will be shown in the next chapter, Uganda has an extensive anti-corruption framework consisting of various permanent institutions with different procedures and methods available to them. Moreover, Commissions of Inquiry are often instituted based on the findings of an investigation by another agency. Further still, inquiries usually recommend yet more investigation by other agencies in their reports. Thus it would be fair to say that the reasons for the government’s reliance on *ad hoc* inquiries as a way of complying with conditionality is much more complex than implied, and will be further explored in chapters 3-6.

¹¹¹ International Development Association and International Monetary Fund (2005) Poverty Eradication Action Plan Joint Staff Advisory Note, [http://siteresources.worldbank.org/INTPRS1/Resources/Uganda_JSAN\(June23-2005\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/Uganda_JSAN(June23-2005).pdf), last accessed 15 January 2011.

At this juncture, it is important to evaluate the good governance discourse impact on reducing corruption in developing countries generally and Uganda in particular.

2.2.4 Has anti-corruption has failed? Evaluating the impact of the Good Governance

Discourse and Governance Related Conditionalities

It is evident there has been no shortage of good intentions from both donors and recipients to tackle corruption. The paradox is that despite self-acknowledged failures in fighting corruption, Uganda remains a “star child” of the World Bank. It is hailed for successfully internalising neo-liberal economic policies, with stable economic growth rates and other favourable macro-economic indicators. It has been praised as an “African Success Story” and its President, Yoweri Museveni, as one of a “new breed of African Leaders.”¹¹²

Uganda was the first country to qualify for debt relief under the Highly Indebted Poor Countries (HIPC) Initiative,¹¹³ and its Poverty Eradication Action Plan (PEAP), the government’s overarching development policy, pre-dated PRSPs and became the template for Poverty Reduction Strategy Papers (PRSPs) in other developing country states that were recipients of World Bank loans.¹¹⁴ Uganda’s former Minister of Finance, Ezra Suruma, won the 2008 World Bank “Africa Minister of Finance of the Year” award based

¹¹²See Oloka-Onyango, J. (2004) "New-Breed" Leadership, Conflict, and Reconstruction in the Great Lakes Region of Africa: A Sociopolitical Biography of Uganda's Yoweri Kaguta Museveni, *Africa Today* 50(3): 29-52

¹¹³ See World Bank, (2010) *World Bank – Countries – Uganda- Highly Indebted Poor Countries (HIPC) Initiative*, at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/UGANDAEXTN/0,,contentMDK:20225952~menuPK:473833~pagePK:141137~piPK:217854~theSitePK:374864,00.html>; accessed 10 December 2010.

¹¹⁴ See Kamanyi, J. (2003), *PRSPs, Development Assistance, Gender and Enterprise Development Impact Assessment: The case of Uganda*, Conference Paper, Institute for Development Policy and Management (IDPM) University of Manchester.

on Uganda's impressive economic performance, and current Minister Syda Bbumba won the same award as recently as 2010.¹¹⁵

Uganda enjoys a special relationship with the IFIs, according to Harrison, who classifies Uganda as a "governance," "post-conditionality" state. Governance states are those "which can be said to have internalised the impetus of governance", "where the governance project has succeeded" and neo-liberalism is no longer based on external intervention but has been internalised.¹¹⁶ Indeed, the PRSP reports usually highlight the progress that has been made in tackling corruption, especially in the area of legal and institutional reform.¹¹⁷ This is further buttressed by Global Integrity's rankings, where Uganda scores highly for anti-corruption laws, policies and institutions.¹¹⁸

And yet, problems persist, as revealed the same PRSP progress reports to the World Bank, where Uganda has admitted its poor performance in Transparency International's Corruption Perception index rankings.¹¹⁹ Various scholars have argued that anti-corruption

¹¹⁵ "The Banker" Finance Minister of the Year/ Africa: Dr. Ezra Suruma, Uganda , at <http://www.thebanker.com/Awards/Finance-Minister-of-the-Year>, last accessed 12 January 2010. See also, Mugerwa, Y., and W. Wafula, (2010) "Uganda's Finance Minister emerges top," *Africa Review* 12 October 2010, at <http://www.africareview.com/News/Ugandan%20Finance%20minister%20emerges%20tops/-/979180/1031100/-/hf52h0z/-/index.html>, accessed 12 January 2010.

¹¹⁶ Harrison, G., (2004) *The World Bank and Africa: The Construction of Governance States*, London: Routledge, pp. 3-4.

¹¹⁷ See *PRSP Progress Report 2002*, op. cit., page 40 for an example: "The IGG Statutes Act is now passed and awaits the assent of the President. In addition, the proposed new Leadership Code is one of the strongest in Africa."

¹¹⁸ See Global Integrity, <http://report.globalintegrity.org/Uganda/2009>, accessed 22 September 2010. Uganda's CPI rankings and Global Integrity Scorecard are discussed further in Chapter 3.

¹¹⁹ See, for example, Government of Uganda, Ministry of Finance, Planning and Economic Development, *PRSP Progress Report 2002*: "Uganda has also 'risen' from number 11 in 2000 to number 3 by June 2001 in transparency International's (TI) ranking of international perceptions of corruption, though the comparability of TI data across time and space is not without methodological difficulties," p. 40. The report does not elaborate on what those difficulties are.

failure is attributable to questions over the effectiveness of aid in general, the legitimacy of conditionality, as well as a number of inter-related factors in the complex arena of international power relations between IFIs, donors and recipients. Furthermore, good governance has lately come full circle, that is, the failure of the good governance agenda to transform governance in Africa is now attributed to the nature of the state and politics in Africa, which is regarded as resistant to change. These issues are explored in greater detail below.

The (in) effectiveness of aid

One of the most virulent critics of aid so far, Dambisa Moyo, describes aid as “dead” because despite two trillion dollars worth of aid, African problems have not been solved, but on the contrary, have been exacerbated by corrupt governments sustained on aid.¹²⁰ She added her voice to that of Collier, who had already pointed out the moral hazard inherent in aid, that is, the fact that the injection of aid alleviates the immediate fiscal crises of recipient governments, and hence reduces the urgency for change.¹²¹

Aid can therefore delay reform or result in perfunctory reform. Moreover, the fact that there is no penalty for defaulting on promises for reform further reinforces the moral hazard, since donor agencies that should enforce conditionality have an interest in realising some form of success rather than admitting to failure. Therefore, conditionality

¹²⁰ Moyo, D. (2010) *Dead Aid: Why aid is not working and how there is a better way for Africa*, New York : Farrar, Straus and Giroux

¹²¹ Collier, P. (2000). “Conditionality, Dependence and Coordination: Three Current Debates in Aid Policy;” in *The World Bank: Structure and Policies*. By C. L. Gilbert and D. Vines. Cambridge, Cambridge University Press.

enforcement is relaxed or put off when the recipient government shows some signs of fulfilling a promise. When the aid is subsequently disbursed, the recipient government may renege on its earlier promises for reform. Moreover, delays in releasing tranche payments as a way of enforcing conditionality usually does not cost recipient governments much and they can even negotiate new credits.¹²²

In this manner, aid fuels rather than curbs, corruption. Cooksey points out that aid presents perverse incentives to recipient governments and is vulnerable to systematic misuse.¹²³

Aid not only presents perverse incentives, but increases corruption in other ways, for example; through creating opportunities for corruption in the privatisation process, distorting accountability such that governments are beholden to donors and not to their citizens, and directly providing funds for financing patronage and clientelism.¹²⁴

Shrewd recipient country governments evade conditionality by agreeing to take action so that aid can be disbursed, but then subsequently delay implementation or take only rhetorical or symbolic action.¹²⁵ Symbolic action aptly describes the enactment and establishment of numerous laws, policies and institutions that subsequently are not

¹²² Killick, op. cit, at p. 138.

¹²³ Cooksey, B. (2003). *Aid and Corruption: A Worm's-Eye View of Donor Policies and Practices*, paper presented at 11th International Anti-Corruption Conference Seoul, South Korea .

¹²⁴ See for example, Goldsmith, A. (2003), "Foreign aid and statehood in Africa." *International Organization* 55(01): 123-148; Shivji, I. and G. Murunga (2009), *Where Is Uhuru?: Reflections on the Struggle for Democracy in Africa*, Pambazuka Pr; Mwenda, A. M. and R. Tangri (2005), "Patronage Politics, Donor Reforms and Regime Consolidation in Uganda," *African Affairs*(104/416): 449-467.

¹²⁵ Crawford, G. (2001). *Foreign aid and political reform: a comparative analysis of democracy assistance and political conditionality*, Palgrave Macmillan , at p. 206.

effectively enforced and utilised. This reduces anti-corruption efforts to a mere performance.

Lack of ownership of the reform process

Despite the rhetoric about local ownership of PRSPs, non-implementation of conditionality has also been blamed on weak recipient government ‘ownership’ of the measures that conditionality seeks to bring about. In other words, the fact that proposed policy changes are not initiated by recipient governments leads to lack-lustre implementation. Many times, IFI and donor objectives clash with those of recipient country governments. For example, whereas a significant number of conditions aim at downsizing the state, recipient governments may wish to maintain the status quo or even expand. A further concern is the extent to which civil society in recipient countries, as opposed to central government is associated with the reforms. When local ownership of policies is lacking, there is a breach between the interests of the donors who initiated the reforms and those who are supposed to be executing the reforms.

Inherent in the problem of lack of ownership is the “one-size-fits all” approach that characterises anti-corruption. The similarities in anti-corruption laws and institutions in many parts of the world, in disregard of local conditions and circumstances, is testament to this. Many countries’ anti-corruption strategies are, on the recommendation of the IFIs, modelled on the experience of Hong Kong and Singapore, which have been lauded for their resounding success in fighting corruption. The approach involves the establishment

of a single, central anti-corruption agency with investigatory, prosecutorial, and educational mandates; as opposed to a multi-agency *ad hoc* response to corruption.

It has been pointed out that what worked in Hong Kong and Singapore might not work in Africa, given the differences in the political contexts in which reforms are being implemented, and the differences in resources and capabilities from country to country. Indeed, for such agencies to be successful, certain minimum political, legal and socio-economic conditions for governance are necessary. These conditions are lacking in many countries such as Uganda.¹²⁶ Heeks proposes the term ‘contextual collision,’ to describe this tendency, that is, the fact that anti-corruption measures are designed in one context with its own values, resources and skills for application in another context that may not necessarily have the same characteristics. He views anti-corruption measures as ‘technology transfers’ that may not be ‘fit-for-purpose’ due to these differences in context.¹²⁷ Similarly, Doig and Robert’s study, in which Uganda was one of the case studies, found that ACCs in developing countries suffer from the same weaknesses as other public sector institutions in those countries – inadequate funding, inadequate staff

¹²⁶ This argument against anti-corruption conditionality is made by Heilbrunn, J. H. (2004). Anticorruption Commissions: Pancea or Real Medicine to Fight Corruption?, World Bank Institute; Meagher, P. (2005). "Anti-corruption agencies: Rhetoric Versus reality." *The Journal of Policy Reform* 8(1): 69-10; Doig, A., D. Watt, et al. (2006), "Hands-on or hands-off? Anti-corruption agencies in action, donor expectations, and a good enough reality." *Public Administration and Development* 26(2): 163-172; Doig, A., D. Watt, et al. (2007). "Why do developing country anti-corruption commissions fail to deal with corruption? Understanding the three dilemmas of organisational development, performance expectation, and donor and government cycles." *Public Administration and Development* 27(3): 251-259.

¹²⁷ Heeks, R. (2005). Contextual Collision, Failure and Accommodation of Anti-Corruption Initiatives: When Rational Designs Meet Corrupt States; paper presented at the Conference on *Redesigning the State? Political Corruption in Development Policy and Practice*, 25 November 2005, University of Manchester, UK

and other institutional weaknesses; which limit their effectiveness in fighting corruption.

The next chapter will look at this issue in greater detail.

Lack of accountability and transparency in aid programmes

A number of commentators have pointed out the ways in which aid distorts the virtue of accountability that it seeks to promote by encouraging accountability to aid donors as opposed to citizens. Governments in third world countries such as Uganda have mastered the art of dancing to the tune of the aid-donor pipers while ignoring and even suppressing the demands of their citizens. Thus, the top-down nature of aid-driven policy reform further marginalises the ordinary citizens who are supposed to be beneficiaries of aid.¹²⁸

Indeed, some scholars maintain that the WB's good governance agenda is incapable of bringing about the quality of government that it seeks to promote, chiefly because it avoids explicit references to politics and power relations in recipient countries, and yet these are crucial elements of accountable and transparent government.¹²⁹

Thus, it may be deduced that the World Bank's show-casing of Uganda as a success story, while turning a blind eye to negative tendencies in the politics of the country, has contributed to the prevailing contradictions in Uganda's governance: a plethora of anti-corruption policies, laws and institutions that are unfortunately, weakly enforced because the citizenry really does not matter in the equation. Due to the fact that the state relies

¹²⁸ See Barya, J. J. and J. Oloka-Onyango (1997). "Civil society and the political economy of foreign aid in Uganda." *Democratisation* 4(2): 113-138.

¹²⁹ See, for example, Santiso (2001) op. cit.

more on aid than taxes to finance itself the “social contract” as envisaged by Rousseau is distorted and accountability measures tend to be symbolic rather than real.

Questions regarding the legitimacy of conditionality

Another ground on which conditionality is disapproved is that it interferes with the international law principle of state sovereignty enshrined in Article 2 of the United Nations Charter. Conditionality infringes the right of states to determine their domestic affairs by making direct prescriptions about how recipient governments should run their internal affairs.¹³⁰ Thus conditionality and the aid project in general have been disparaged as part of a larger neo-colonial adventure;¹³¹ and as moral and cultural imperialism.¹³² Despite the fact that GRCs are couched in rhetoric of “partnerships” between donors and recipients, the obviously unequal and hierarchical nature of the relationship between donors and recipients reinforces the veracity of these claims. Abrahamsen says that “good governance reproduces the hierarchies of conventional development discourse, whereby the third world is still to be reformed and delivered from its current underdeveloped stage by the first world.” Conditionality is therefore linked to larger discursive practices through which global power and domination are exercised.¹³³

¹³⁰ Crawford, op. cit.

¹³¹ De Maria, W. (2005). *The New War on African "Corruption:" Just another neo-colonial adventure*, 4th International Critical Management Studies Conference. Cambridge University.

¹³² Fitzpatrick, P. (2001). *Modernism and the Grounds of Law*, Cambridge Univ Pr; Anghie, A. (2004). “International financial institutions,” in: C. Reus-Smit, *The Politics of International Law*, , Cambridge University Press: 217-237; Tan, C. (2005). ; “The Poverty of Amnesia: PRSPs in the Legacy of Structural Adjustment,” in D. Stone and C. Wright, *The World Bank and Governance: A Decade of Reform and Reaction*, London, Routledge, pp. 147-167.

¹³³ Abrahamsen, op. cit., pp. 44-45

IFIs such as the WB and IMF downplay the coercive and involuntary nature of conditionality, insisting that it is consensually agreed upon after long consultations.¹³⁴ The emphasis on “partnership” and “participation” in aid discourse is supposed to show the voluntary nature of conditionality.¹³⁵ This is even more so in “post-conditionality,” “governance states” such as Uganda, where World Bank policies have been so internalised that Himbara and Sultan 1995 referred to Uganda as a “Bantustan” or a puppet regime where donors pulled all the strings. This accusation was based on the fact that “foreign aid, in effect, became the cornerstone of the reconstruction process, while donor expatriates increasingly constituted the principal actors in the realm of public policy.”¹³⁶ Uganda was not only donor-funded, but also donor administered.¹³⁷

Thus, wariness over accusations of imperialism and interference in sovereignty causes donors to adopt a “soft” approach that inevitably leads to non-enforcement. This is further worsened by the fact that the World Bank’s mandate forbids it from making explicit recommendations on political matters. In an interview undertaken as part of this study, a World Bank official in the Uganda Country Office admitted that “as far as the World Bank is concerned, Uganda is doing very well.” This is indeed buttressed by the fact that Uganda’s Ministers of Finance have twice been awarded with the “Finance Minister of the Year” honour, as discussed above. She maintained that Uganda’s macro-economic

¹³⁴ Killick, op. cit, at p. 9.

¹³⁵ Tan, op. cit, at p. 152

¹³⁶ Himbara, D. and D. Sultan (1995). "Reconstructing the Ugandan state and economy: the challenge of an international Bantustan." *Review of African Political Economy* 22(63): 85-93.

¹³⁷ Himbara and Sultan’s observations continue to hold true; for example, in the Justice, Law and Order Sector Secretariat, the Chief Technical Advisor position appears to be reserved for expatriates, who then have nationals working under them. See staffing details at website <http://www.jlos.go.ug>, last accessed 12 January 2011.

performance is in line with World Bank expectations, and confessed that the Bank's silence on matters that are regarded as being political may indeed have a negative impact on anti-corruption. This illustrates how a "soft approach" undermines the enforcement of conditionality.

How self interest undermines the enforcement of conditionality

Rational choice theory posits that in the arena of international relations, states are guided largely by self-interest in their actions.¹³⁸ This holds true in the relationships between aid donors and their recipients. Bose and Burnell 1991's analysis of British overseas aid illustrates the tension between altruism and self-interest that underlie the British government's aid policies.¹³⁹ America's foreign policy too, encompasses both idealism and self-interest, hovering between America's desire to "spread" democracy and its capitalist and security interests.¹⁴⁰

The apologetic stance of donors referred to above is not only due to the illegitimacy of conditionality, but also due to self-interest. Burnell notes that bi-lateral aid agencies adopt an apologetic stance in their dialogue with recipient governments, citing the political pressure from home to justify their need to interfere in recipient countries' internal

¹³⁸ Snidal, D. (2002). "Rational choice and international relations." *Handbook of international relations*: 73.

¹³⁹ Bose, A. and P. J. Burnell (1991). *Britain's Overseas Aid Since 1979: Between Idealism and Self-interest*, Manchester Univ Press.

¹⁴⁰ Moss, T. (2008). "US policy and democratisation in Africa: The limits of liberal universalism." *The Journal of Modern African Studies* 33(02): 189-209.

affairs.¹⁴¹ This sends a signal to recipient countries that all they need to do is avoid embarrassing the donor organisations, whose own institutional interests require that they continue to mount aid programmes. Recipient countries are thereby able to manipulate the situation to their advantage by doing only what they consider minimal to keep up appearances.¹⁴² Thus, we see a power play in which developing states' governments exercise agency and have ways of resisting and manipulating global hegemonic power to their own advantage. While appearing on one hand to be mere puppets of the World Bank, IMF and Bilateral donor hegemony, they take advantage of their apparent weakness to do the bare minimum necessary to keep the aid flowing.

Kanbur explains how self interest hinders the enforcement of GRCs, especially on the part of the IMF and WB. Enforcement would mean a reduction in aid, which would affect debt servicing outflows to donor countries and tarnish the agency's image before its political masters, but also jeopardise the entire aid project on which the livelihoods and careers of donor agency staff depend.¹⁴³ This has been referred to by Araral Jr. as the "career dilemma."¹⁴⁴ Kanbur says that conditionality illustrates "the strength of weakness and the weakness of strength," that is to say, the IFIs and donors, although regarded as the more powerful, are rendered "weak" by their vested interest to keep the aid flowing.

¹⁴¹ The statement of Uganda's development partners quoted above, in which they refer to "the tax payers back home," above at page 42 is a good example of the "apologetic stance" at work. A firmness that conditionality would be enforced and aid reduced is what would have been expected.

¹⁴² Burnell, P. (1994). "Good Government and Democratization: A Sideways Look at Aid and Political Conditionality." *Democratisation* 1(2): 485-503.

¹⁴³ Kanbur, R. (2000). "Aid, Conditionality and Debt in Africa," in F. Tarp (ed) *Foreign Aid and Development: Lessons Learnt and Directions for the Future*. London, Routledge.

¹⁴⁴ Araral Jr, E. (2008). "Is foreign aid compatible with good governance?" *Policy and Society* 26(2):1-14.

Concomitantly, recipient governments, although seemingly “weaker” know this fact and use the “strength” of their “weakness” to wantonly violate conditionality.¹⁴⁵ No wonder he calls it “a dance”¹⁴⁶ while Mwenda refers to it as “a game of cat and mouse.”¹⁴⁷

Self-interest also encompasses geo-strategic and economic interests. During the Cold War, geo-strategic interest signified countries that were allied to capitalism as opposed to socialism; in the post 9/11 world, a line is drawn between countries regarded as allies in the war against terror and those regarded as enemies. Furthermore, following the collapse of socialism and the rise of global capitalism, Western Donor countries have sought to maintain good relations with countries that are regarded as important for trade and investment, especially China and other countries in South East Asia such as Thailand and Malaysia.¹⁴⁸

Studies have shown that GRCs are not enforced or are weakly enforced in those countries that are regarded as geo-strategically or economically important, such as Egypt, Algeria and Uganda.¹⁴⁹ De Maria says the “new war on African corruption is just another neo-colonial adventure,” because “it is rooted in western orthodoxies of liberal democratic capitalism and thinly disguised neo-colonial aspirations of promoting free trade and

¹⁴⁵ Kanbur, R. (2000). “Aid, Conditionality and Debt in Africa,” in *Foreign Aid and Development: Lessons Learnt and Directions for the Future*, F. Tarp, Routledge. See also, Araral Jr, E. (2008). “Is foreign aid compatible with good governance?” in *Transforming Asian Governance: Rethinking Assumptions, Challenging Practices*: 58

¹⁴⁶ Kanbur, R; op.cit

¹⁴⁷ Mwenda, A. (2003) *Playing mouse to the IMF and World Bank cat: How donors finance armed conflict, promote corruption, stifle democracy, and sustain state patronage: a case study of Uganda 1987-2003*. (Unpublished).

¹⁴⁸ Crawford, op. cit.

¹⁴⁹ Ibid, at pp. 206-207.

fighting terrorism, the new priority on the Western agenda since the end of Communism.”¹⁵⁰ Countries regarded as allies in the war on terror or as strategically important are allowed to get away with bad behaviour. For example, in Kenya and Pakistan corruption increased despite aid conditionality and anti-corruption aid was subsequently re-routed as anti-terrorism aid. In Ghana, corruption increased despite privatization and the international community said and did nothing about it.

Alesina and Dollar’s study on the motives behind foreign aid showed that “who gets aid and why” is influenced largely by geo-political and strategic considerations, and not so much by the economic needs and policy performance of the recipients. They found that colonial past and political alliances are also major determinants of who gets aid.¹⁵¹ In a subsequent study Alesina and Weder further disproved the myth that aid is selectively applied to reforming governments that promote good governance and anti-corruption. They found no evidence that less corrupt governments receive less aid; on the contrary, some highly corrupt governments were found to receive more aid!¹⁵²

Indeed, Haynes avers that donors’ continued support for the Ugandan regime despite its shortcomings was because their key interest is the stability of the country as an entry point into Africa’s resource-rich Great Lakes’ Region; as well as Uganda’s reputation as an economic recovery success story following successful implementation of World Bank

¹⁵⁰ De Maria op. cit., p. 1.

¹⁵¹ Alesina, A. and D. Dollar (2000). "Who gives foreign aid to whom and why?" *Journal of economic growth* 5(1): 33-63.

¹⁵² Alesina, A. and B. Weder (2002). "Do corrupt governments receive less foreign aid?" *American Economic Review* 92(4): 1126-1137

Structural Adjustment Programmes (SAPs).¹⁵³ Lynch gives a detailed analysis of Uganda's geo-strategic importance to the United States, highlighting its willingness to send troops to Liberia in 1994, showing solidarity in the US' hour of need by expressing support for the "coalition of the willing" in 2003, as well as sending troops to Somalia after the US withdrew its own. Uganda is strategically located at the heart of Africa and is regarded as a bulwark against the spread of Islamic fundamentalism from its northern neighbour Sudan. Uganda and the US continue to cooperate militarily. Uganda, with the support of the US, currently has troops in Somalia, following the US' tactical withdrawal from that country in 1994, due to the heavy casualties suffered in 1993. The US has also provided assistance to the Uganda government to repulse and try to eliminate the rebel Lords' Resistance Army.¹⁵⁴

With this in mind, it is no surprise that donors continue to support and praise Uganda despite clear evidence of corruption. The non-enforcement of conditionality, shifting of goal-posts by IFIs and donors and their tendency to take an "apologetic stance" when reprimanding the government about its lack of seriousness in dealing with corruption does not bode well for the manner in which anti-corruption is implemented at the domestic level. It also has implications for the appointment, process and outcome of commissions of inquiry appointed to investigate corruption. These issues will be explored in greater detail in the chapters that follow.

¹⁵³ Haynes, J. (2001). "'Limited' Democracy in Ghana and Uganda. What Is Most Important to International Actors: Stability or Political Freedom?" *Journal of Contemporary African Studies*, 19(2): 183-204.

¹⁵⁴ Lynch, E. (2007). "Uganda and US Foreign Policy." *Orbis* 50(1): 103-116. See also Among, B. (2011) "US Applauds Uganda's role in Somalia," *The New Vision*, January 15 2011.

GRC enforcement and “The Samaritan’s dilemma”

The concept of the Samaritan’s Dilemma in donor aid programmes was brought to prominence by Gibson, Andersson et al. In their view, the non-enforcement of conditionality is due to the inevitability that stopping or reducing aid would only cause further chaos in the economy and have devastating effects on the poorest sections of society.¹⁵⁵ Recipient country governments are aware of this and hence use delaying tactics or implement reforms that amount to mere facades, such as appointing commissions of inquiry and then not following through on recommendations.

Geographical morality

Crawford’s analysis of conditionality enforcement clearly reveals how Sub-Saharan African Countries bear the brunt, while other countries that rely on aid such as Algeria and Egypt rarely, if ever, have to deal with the threat of reduced aid.¹⁵⁶ Whereas this may be related to the security and geo-strategic importance of such countries, it may also be inferred that inconsistency in the application of conditionality has to do with what Alai has called geographical morality – “the norm by which a citizen of a country in the North may engage in acts of corruption in any country in the South, including bribery and extortion, without the attachment of any moral condemnation to those acts... The norm is based on

¹⁵⁵ Gibson, C. C., K. Andersson, et al. (2005). *The samaritan's dilemma: the political economy of development aid*, Oxford University Press.

¹⁵⁶ Crawford, op. cit.

the world view that non-Christian, non-Western, and non-white individuals are fundamentally immoral and corrupt when measured by European standards.”¹⁵⁷

Geographical morality is implicit in the anti-corruption and good governance discourse in a number of ways. Firstly, there is the insinuation that corruption is a problem of “bad governance” typical of Sub-Saharan African countries, where corruption is “endemic,” “the norm,” “a way of life,” and “culturally condoned.”¹⁵⁸ Geographical morality is the major import of Transparency International’s Corruption Perception Index, whose rankings barely change from year to year and consistently show the rich countries of the North at the top of the table and the poor countries of the South at the bottom.¹⁵⁹

Therefore, selective enforcement of conditionality may be a reflection of the thinking that Sub-Saharan Africans and their governments are inherently corrupt. This is further reinforced by the fact that even in those instances where conditionality has been enforced, it has not been due to corruption but due to a perceived failure to achieve set targets with regard to elections and democracy. For example, the reduction of aid funding to Kenya in the late 1980s was largely due to then incumbent Moi’s reluctance to hold elections and hand over power.¹⁶⁰ Similarly, in 2005 when Yoweri Museveni of Uganda pushed for a constitutional amendment to lift presidential term limits, the British government withheld £17 billion in aid in what was probably the most visible instance of conditionality

¹⁵⁷ Alai, P. (2000). "The Legacy of Geographical Morality and Colonialism: A Historical Assessment of the Current Crusade Against Corruption." *Vanderbilt Journal of Transnational Law* 33: 877- 904.

¹⁵⁸ For an analysis of corruption as “part of African culture,” see de Sardan, J. P. O. (1999). "A moral economy of corruption in Africa." *Journal of Modern African Studies* 37(1): 25-52.

¹⁵⁹ See De Maria, Bill (2008) op. cit., for a discussion of the CPI as a neo-colonial project.

¹⁶⁰ The silence and seeming acquiescence of donors in corruption is one of the themes in Michela Wrong’s (2009) *“It’s our turn to eat: The story of a Kenyan Whistleblower,”* Harper Collins.

enforcement in Uganda. Norway and other countries similarly reduced their aid that year by about 30%.¹⁶¹

The tendency to turn a blind eye towards corruption in countries such as Uganda, or geographical morality necessarily weakens the anti-corruption project by promoting apathy, scepticism and cynicism in countries that are supposed to be implementing anti-corruption policies.

“Do as I say and not as I do:” donors not practising what they preach

Double standards are also visible in the lack of reciprocity of the policy standards between donors and their recipients. It is possible to question the moral standing of donors, given their previous willingness to overlook bad governance during the Cold War; the lack of transparency and accountability in aid programmes themselves; as well as the contradictory policies of donors, for example aid vis-à-vis arms exports and military assistance.¹⁶²

Furthermore, some donor countries have evidently failed to live up to their own standards of integrity, as can be seen in the British Aerospace – al Yamamah corruption controversy in the United Kingdom. The controversy started in the early 1990s and involved the

¹⁶¹ See Mutumba, R. (2005) “Norway cuts aid over Kisanja,” The Daily Monitor, 19 July 2005, at <http://allafrica.com/stories/200507181633.html>; last accessed 22 February 2011. See also, BBC News “Uganda unbowed after UK aid cut,” 21 December 2005. It is worth noting that the aid was not cut as such but diverted from direct budget support to social and economic re-construction programmes in Northern Uganda which had been devastated by 20 years of civil war.

¹⁶² Crawford, op. cit, at p. 41.

investigation by the British Comptroller & Auditor General of a series of arms deals from 1986 – ongoing between British Aerospace (subsequently privatised as BAE Systems) and al-Yamamah which are alleged to have involved huge commissions or bribes. The report was submitted to the Parliamentary Public Accounts Committee and subsequently suppressed by its Chair, MP Mr. Sheldon, on grounds that “the Saudis could have taken amiss the contents, and there were a lot of jobs at stake.”¹⁶³

Subsequently in 2004, the UK Serious Fraud Office (SFO) launched investigations into the matter. The investigations were launched at a time when BAE Systems and the UK government were involved in series of negotiations with the Saudi government and al-Yamamah over the third phase of the contract that had begun earlier in 1986. The SFO then announced in December 2006 that it was discontinuing the entire investigation on advice from the Attorney General that it was contrary to national and international security. The former British Prime Minister was quoted in the media as saying that “strategic interests come first.”¹⁶⁴ What he did not explicitly state, but which has nevertheless been acknowledged by other commentators, is that in the defence sector, Britain “is virtually a Saudi Client State” and that it was not just security interests at stake, but business interests as well.¹⁶⁵

¹⁶³ Lustgarten, L. (1998). "The Arms Trade and the Constitution: Beyond the Scott Report." *The Modern Law Review* 61(4): 499-514., quoting *The Guardian*, 11 October 1994.

¹⁶⁴ BBCNews. (2006). "Blair defends Saudi Probe Ruling," at http://news.bbc.co.uk/1/hi/uk_politics/6182125.stm, last accessed 02 December 2010.

¹⁶⁵ Lustgarten, op. cit. The BAE corruption scandal was recently swept under the carpet in what was described as the first case of “corporate plea bargaining” when BAE admitted to a charge of “conspiring to make false statements to the US government,” and paid a £250 million fine to the US government. The US government started investigating the matter in 2007 when the UK dropped investigations into BAE’s deals with al-Yammamah. BAE then reached a

The saga shows that governments such as the UK supposedly at the vanguard of the war on corruption are chiefly concerned about protecting the capitalist interests that form the basis of their neo-liberal mercantilist state, although this may sometimes be dressed up as “security interests.”¹⁶⁶ It shows that anti-corruption is not about corruption per se, but about capitalist interests.

The scandal of the UN-Iraq Oil-For-Food Programme (OFFP) provides another example of donors failing to live up to their own standards. Following the implementation of trade sanctions against Iraq as punishment for its invasion of Kuwait, the UN Security Council put in place the OFFP to avert an impending humanitarian disaster arising from lack of adequate food and medicine in Iraq. Contracts for the supply of food and medicine were awarded to a number of UN Security Council approved International Companies by the government of Iraq. It later emerged that the arrangement was characterised by extensive bribes, with companies paying ‘surcharges’ to the Iraq government on every barrel of oil supplied. Similarly, companies bidding to supply food and medicine were only selected by the Iraq government if they agreed to make side payments incorporated into the contract as inflated prices, training costs and other disguises. Nevertheless, prosecution of the implicated companies, many of which fall under the jurisdiction of states that have been at

deal with the UK Serious Fraud office and pleaded guilty to “breach of duty to keep accounting records and was fined £ 25.2 million in respect of a separate case involving bribery allegations in the supply of a radar system to Tanzania. See BBC News, (2010) “BAE systems handed £286m criminal fines in UK and US, <http://news.bbc.co.uk/1/hi/business/8500535.stm>, last accessed 02 December 2010.

¹⁶⁶ De Maria, op. cit.

the forefront of the international anti-corruption crusade, has been lack-lustre or non-existent.¹⁶⁷

Obidairo posits that the OFFP and BAE scandals that are cited above are evidence of the fragility of the international anti-corruption framework. He argues that despite the expansion of the international anti-corruption laws and institutions, political expediency remains the biggest threat to the attempt to curb trans-national corruption.¹⁶⁸

Inconsistencies such as those revealed through the BAE and OFFP scandals not only undermine attempt to curb transnational corruption, but cast a shadow over domestic anti-corruption efforts in developing countries that are implementing reforms at the behest of donors and international agencies.

“Bad governance” as a hindrance to the good governance agenda

Apart from the issues discussed above, another explanation that has been proffered for the limited impact of anti-corruption in Sub-Saharan African countries such as Uganda is “bad governance.” For example, Unsworth has castigated donors for failing to engage and understand the role of local politics in hindering the successful implementation of many aspects of the agenda.¹⁶⁹ Cammack explicitly said that the failure of good governance and anti-corruption is due to the nature of politics in developing countries, which they describe

¹⁶⁷ See: *Report of the Independent Inquiry Committee into the UN Oil-for-food Programme*, 2005, available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_10_05_summary.pdf, last accessed 28 March 2011.

¹⁶⁸ Obidairo, T.S. (2008) *A fragile consensus on regulating transnational corruption: a case study of the OFFP and BAE scandals*, available at SSRN: <http://ssrn.com/abstract=1295903>.

¹⁶⁹ Unsworth, S. (2007). "Rethinking Governance to Fight Corruption." *U4 Anti-corruption Brief* (7).

as neo-patrimonial and inherently resistant to the changes envisaged under the good governance agenda.¹⁷⁰ As this is considered in the next chapter it will not be dwelt on it at this point.

2.1. 5 The “good governance” discourse and the apparent failure to discipline corruption in Uganda: what next?

The problems outlined above have various implications for the manner in which good governance and anti-corruption have been “internalised” in Uganda. As a “governance state” that is said to be enjoying “post-conditionality” as an economic recovery showcase, Uganda has an extensive anti-corruption framework, put in place at the behest of donors.¹⁷¹ Simultaneously, there is weak enforcement of anti-corruption law and policy. This disjuncture between good governance as implemented through political conditionality and actual facts on the ground highlights the shortcomings of the good-governance discourse as a disciplinary mechanism of global governance. The question therefore, is whether the good governance discourse, disseminated as part and parcel of the international aid project, is “dead” as Moyo reiterates, and whether it should be completely abandoned as she suggests.¹⁷²

¹⁷⁰ Cammack, D. (2007). "The Logic of African Neopatrimonialism: What Role for Donors?" *Development Policy Review* 25(5): 599-614. See also, Amundsen, I. (2006). *Political Corruption and the Role of Donors in Uganda*. CMI Commissioned Report_Chr. Michelsen Institute;; Fritz, V. and A. R. Menocal (2007). "Developmental states in the new millennium: Concepts and challenges for a new aid agenda." *Development Policy Review* 25(5): 531-552.

¹⁷¹ Uganda’s anti-corruption framework will be discussed in chapter 3.

¹⁷² Moyo, D. (2009) *Dead Aid: Why Aid Is Not Working and How There Is a Better Way for Africa*, New York : Farrar, Straus and Giroux.

Nevertheless, there are some who argue that aid and GRCs have, to a significant extent, been a force for good. The World Bank insists that “aid can be the midwife of good policy.”¹⁷³ For instance, as mentioned previously, Uganda has been able to establish a legal and institutional framework for fighting corruption, however ineffective it may be. In addition, the free markets and economic liberalisation that Moyo advocates as a solution to Africa’s problems have been implemented with some success, leading to a significant growth in banking, telecommunications, energy, tourism and other sectors. Furthermore, political conditionality may be credited for providing a major impetus for democracy in many African countries. Uganda converted from a one-party to a multi-party state in 2006 largely as a result of donor pressure. Aid conditionality therefore helped to “tip the balance,” combining with rising internal opposition and other circumstances to provide the extra leverage necessary for change.¹⁷⁴

Furthermore, Knack’s study showed that foreign aid can promote democracy through the technical assistance that fosters electoral processes; judicial and parliamentary independence as checks on executive power; and more vibrant civil society organisations including a free press.¹⁷⁵ These factors have had important implications for Uganda, and in particular, for the significance of commissions of inquiry. The impact of good governance discourse on Uganda is therefore complex, and is characterised by contradictions. While it has had a limited impact on corruption, it has infused the

¹⁷³ World Bank, (1998) *Assessing Aid: What Works, What Doesn’t and Why*, World Bank Policy Research Report, New York: Oxford University Press, p. 17.

¹⁷⁴ Crawford, 2001, p. 197.

¹⁷⁵ Knack, S. (2004). "Does Foreign Aid Promote Democracy?" *International Studies Quarterly* 48: 251-266

judiciary, the media and civil society with a dynamism that was previously lacking. The good governance discourse has created spaces which some judges, journalists and civil society activists have utilised to demand more democratic governance.

Thus, good governance is being internalised and reproduced in a manner which is inherently paradoxical and sometimes undermines and at other times, promotes the values on which it is based. Santos' analysis of the dualism and double character of poor relations is therefore pertinent to our evaluation of the impact of the good governance discourse, which has been both boundary setting and path-breaking. These are matters that I elaborate upon in the next chapter.

2.3 The Role of Transnational NGOs – The Corruption Perceptions Index and the Moralisation of Good Governance Discourse

International NGOs are a powerful new force in international politics and are transforming global norms and practices. They have been referred to as “purveyors of norms.”¹⁷⁶

Reimann attributes the rise of INGOs in the post-war period to the availability of funding and unprecedented political access granted to NGOs as a result of the growth of global governance institutions such as the United Nations and its various agencies. Indeed, he proposes that it is possible to identify a pro-NGO international norm in the 1980s, which

¹⁷⁶ Bird, G. and D. Rowlands (2003). "Political economy influences within the life-cycle of IMF programmes." *The World Economy* 26(9): 1255-1278.

put pressure on states to support and include NGOs in national and international political activity.¹⁷⁷ This situation gave NGOs space to thrive and facilitated the birth of new ones.

INGOs tend to be glorified as the do-gooders who oppose globalisation and promote the welfare of the masses¹⁷⁸ or vilified as co-opted agents for the spread of neo-liberal capitalism, legitimating its cause through their involvement in the international development project.¹⁷⁹ They have also been accused of engaging in cultural imperialism.¹⁸⁰ However, scholars such as Baxi and Scholte view INGOs as complex organisations that are not necessarily either pro- or counter-democratic, but are intercultural dynamic political forms that reflect the complexities of the global arena they inhabit.¹⁸¹

INGOs mobilising for human rights have been the most prominent in this regard, having started their campaigns as far back as the eighteenth century, for example the Anti-Slavery Society. After the second world war, there was a significant growth in the number of Human Rights INGOs, and many of these played a crucial role in the institutionalisation of human rights in the UN system. In the 1960s, Amnesty International emerged as global

¹⁷⁷ Reimann, K. D. (2006). "A view from the top: international politics, norms and the worldwide growth of NGOs." *International Studies Quarterly* 50(1): 45-67.

¹⁷⁸ Chandler, D. and G. Baker (2005), *Global civil society: Contested Futures*, Routledge, London.

¹⁷⁹ Calhoun, C. (2004). "A World of Emergencies: Fear, Intervention, and the Limits of Cosmopolitan Order." *The Canadian Review of Sociology and Anthropology* 41(4): 373-396. See also, Petras, J. F. and H. Veltmeyer (2005). *Social Movements and State Power: Argentina, Brazil, Bolivia, Ecuador*, Pluto Press (UK), p. 11)

¹⁸⁰ Calhoun, *ibid.*

¹⁸¹ Baxi, U. (2002). *The Future of Human Rights*, Oxford University Press, New Delhi; Scholte, J. A. (2003). *Democratizing the global economy: the role of civil society*, Centre for the study of Globalisation and Regionalisation, University of Warwick ; Munck, R. (2006). "Global civil society: royal road or slippery path?" *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17(4): 324-331

force for human rights, particularly civil and political rights and today remains one of the most prominent international human rights NGOs.

The early 1990s are recognised as a watershed during which there was a significant rise in the number and scope of international NGOs. Indeed, it was during this period that Transparency International (TI) echoing the name of Amnesty International, was established in 1993 specifically to address anti-corruption. TI was established by Peter Eigen a former World Bank employee keen to make a difference by lobbying the WB and other agencies to take on what at the time was a controversial issue that appeared to exceed the bank's mandate, as the Bank was not allowed to get involved in political matters.¹⁸² Thus, TI, through its Corruption Perceptions Index, became the means by which the element of morality was explicitly added to the good governance discourse that had hitherto promoted itself in amoral terms.

TI embodies the complexities and dilemmas of INGOs referred to above. As a norm entrepreneur or value purveyor, it has been dismissed as an instrument of western imperialism. Its close association with global organisations such as the World Bank and USAID cast a shadow over its motives. The fact that it was founded by a former World Bank employee remains a stain on its legacy, as it is regarded as part of the hegemony of neo-liberal globalisation. Furthermore, most of its funding is from governments such as

¹⁸² Galtung, F. (2000). "A Global Network to Curb Corruption: The Experience of Transparency International." *The Third Force: The Rise of Transnational Civil Society*: 17-47

the UK and the USA, as well as big businesses such as Shell and ExxonMobil.¹⁸³ Some of its benefactors, such as Balfour Beatty Construction, have been associated with international bribery scandals.¹⁸⁴ Moreover, TI's Corruption Perception Index rankings, which always show developed countries at the top and developing ones at the bottom, continue to be criticised for spreading and entrenching neo-colonialism and geographical morality, that is, that developing countries are inherently corrupt while developed countries are not.¹⁸⁵

The Corruption Perceptions Index (CPI) is a compilation of professional polls and surveys that captures the perceptions of international business leaders, risk analysts and business journalists on the relative degree of corruption in various countries around the world. Country scores in the polls are averaged on a scale of zero to ten, where zero is entirely corrupt and ten is a perfectly clean slate. It has been criticised for its subjective nature and inadequacy in capturing the absolute amount of corruption in a country.¹⁸⁶ Nonetheless, the discourse surrounding the CPI is powerful, due to its ability to rank countries into “the good, the bad and the ugly,” and thereby generate waves of moral opprobrium against those that fail to make the mark. As previously mentioned, the Uganda government has found itself on the defensive for failure to reduce corruption when making PRSP progress reports, evidenced mainly by its continual decline in CPI rankings. Indeed, the reach and

¹⁸³ Tucker, C., “Seeing Through Transparency International,” *The Guardian*, 22 May 2008, <http://www.guardian.co.uk/commentisfree/2008/may/22/seeingthroughtransparencyin>, last accessed 18 January 2011.

¹⁸⁴ Palast, G., (2000), “War on Corruption? Not quite, Minister,” *The Guardian*, 09 July 2000, at <http://www.guardian.co.uk/business/2000/jul/09/columnists.guardiancolumnists>, last accessed 18 January 2011.

¹⁸⁵ See De Maria, B (2008) “Neo-Colonialism through measurement: A critique of the corruption perceptions index,” *Critical Perspectives on International Business* 4(2-3):184-202. See also Alai, P. (2000), op. cit.

¹⁸⁶ Galtung, op. cit

influence of TI is such that the Economist has commented that “no country can ignore Transparency International.”¹⁸⁷

The CPI is therefore a technique of international relations that contributes to international social conformity and the internalisation of anti-corruption norms. The failure to conform results in loss of status and a bad reputation. A bad reputation not only casts a country in poor light in the global community but can further translate into low rates of foreign direct investment and /or a reduction in foreign aid. More importantly, the CPI has had an impact on the perceived legitimacy of regimes, with an erosion of public support for governments that are consistently ranked poorly on the CPI.¹⁸⁸ It may therefore be said that the CPI reiterates the existing mechanisms for disciplining corruption, working hand in hand with conditionality and international law to elaborate the discourse of good governance.

A less well-known but increasingly visible anti-corruption INGO is Global Integrity, which was established in 1999. As opposed to TI’s reliance on the perceptions of mostly business people and its links with the hegemonic discourse of the World Bank, Global Integrity was established by Investigative Journalists Charles Lewis and Nathaniel Heller, together with Political Scientist Marianne Camerer. By using investigative journalism and data gathering in various countries, Global Integrity provides detailed qualitative and

¹⁸⁷ *The Economist* (1999). "A guide to graft." 353(8143): 86.

¹⁸⁸ Seligson, M. A. (2002). "The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries," *The Journal of Politics* 64(02): 408-433; Anderson, C. J. and Y. V. Tverdova (2003). "Corruption, Political Allegiances, and Attitudes toward Government in Contemporary Democracies." *American Journal of Political Sciences* 47(1): 91-109

quantitative information on governance in various countries.¹⁸⁹ It has developed an “Integrity Scorecard” which assesses the existence, effectiveness, and citizen access to key governance and anti-corruption mechanisms. The scorecard examines the transparency of the public procurement process, media freedom, asset disclosure requirements, and conflicts of interest regulations. It looks at laws on the books and *de facto* realities of practical implementation in each country. Peer review is a strong component of its methodology. Global Integrity therefore appears to have taken extra care to insulate its methods from the criticism that TI has faced with its CPI.¹⁹⁰ Its approach is useful in providing a broader picture of corruption and governance in a country, and supplements the role played by the CPI in the global elaboration of anti-corruption discourse.

2.4 International Anti-Corruption Law

This section analyses the role of international anti-corruption law (treaties and conventions) in the international fight against corruption. It should be noted that whereas international law in this area has been developing for some time, it was not until 2005 that the first United Nations Convention against Corruption was enacted and subsequently ratified by Uganda. Although the country had earlier on acceded to the African Peer Review Mechanism in 2003, it did not undertake a self-assessment until 2007-8. The analysis in this section is therefore a brief tentative one that looks at the potential and

¹⁸⁹ Global Integrity’s story, at <http://www.globalintegrity.org/aboutus/story.cfm>, last accessed 22 February 2011.

¹⁹⁰ See description of Global Integrity’s methodology, at <http://report.globalintegrity.org/methodology.cfm>, last accessed 22 February 2011.

possibilities rather than impact. After a historical overview, an analysis of the opportunity and threats presented by international anti-corruption law is proffered.¹⁹¹

2.3.1 A historical overview of the making of international anti-corruption law

Aside from the aid conditionality, the growing significance of anti-corruption in Uganda and in the world at large can be attributed to the exponential rise in the number of international treaties against corruption that have been concluded since the 1990s.

Although the 1990s are recognised as the decade where corruption became an important item on the international agenda, these efforts were by no means the first global attempt to address corruption through international treaties. The global community had, since the 1960s, become concerned with bribery and its effects on international business. In 1975, the General Assembly of the United Nations passed resolution 3514 on “Measures against Corrupt Practices of Transnational and Other Corporations, Their Intermediaries and Others Involved.” In 1980, a draft Convention on Illicit Payments was drafted by the UN in accordance with the recommendations of the Working Group. However, the Convention was never adopted due to a lack of consensus in the international community regarding issues such as the criminality of corporations and the measures to be taken against corporations involved in corrupt practices.

¹⁹¹ The analysis is undertaken from an opportunities and threats standpoint because of its limited relevance to the phenomenon under study. Corruption-related commissions of inquiry in Uganda pre-dated the UNCAC of 2005 by several years. Hence it would be misplaced to credit the UNCAC and other treaties such as the APRM for significantly influencing the appointment of commissions of inquiry.

In the meantime, the US had, in 1977, passed the Foreign Corrupt Practices Act.¹⁹² This in turn was a result of the findings of the U.S. Securities and Exchange Commission investigations in the mid-1970s conducted in the aftermath of the Watergate scandal. The investigations found that over 400 U.S. companies had made questionable or illegal payments to foreign government officials, politicians, and political parties. One of the most notorious examples was the Lockheed bribery scandal, in which officials of aerospace company Lockheed paid foreign officials from various governments including Germany, Italy, the Netherlands and Japan to favour their company's products.¹⁹³ Congress enacted the FCPA to end the bribery of foreign officials and to restore public confidence in the integrity of the American businesses. Following the enactment of the FCPA, American businesses started to feel disadvantaged in global markets, due to the threat of criminal penalties for engaging in foreign bribery brought about by this Act. The US government thus became a leading advocate for the creation of international standards to limit cross-border bribery in order to alleviate the under-cutting of American businesses in international transactions.

However, it was not until 1996 that the UN made another attempt to address corruption in the form of the Declaration against Corruption and Bribery in International Business Transactions. Also in 1996, the member States of the Organisation of American States

¹⁹² 15 U.S.C. §§ 78dd-1, et seq.

¹⁹³ See "Scandals: Lockheed's Defence: A right to bribe?" *Time Magazine*, Monday Aug. 18, 1975, at <http://www.time.com/time/magazine/article/0,9171,917751-1,00.html>, accessed 17 January 2010. See also, "Japan: Bribery Shokku at the top," *Time Magazine*, Monday Aug. 09, 1976, <http://www.time.com/time/magazine/article/0,9171,914484,00.html>; accessed 17 January 2010.

passed the OAS Convention against Corruption, which was the first international anti-corruption treaty. In 1997, the UN adopted a Code of Conduct for Public Officials. That same year, the Organisation for Economic Cooperation and Development (OECD) adopted a Convention on Combating Bribery of Foreign Public Officials in International Business. The European Union also adopted a Convention against Corruption involving Officials of the European Communities or Officials of Member States in 1997. In 1999, the Council of Europe adopted two Criminal and Civil Law Conventions on Corruption. In 2000, the UN adopted the Convention on Transnational Organized Crime, and in 2003, member states of the African Union adopted the African Union Convention on Preventing and Combating Corruption. This was later that same year buttressed by the African Peer Review Mechanism (APRM), of the New Partnership for Africa Development (NEPAD) under which African States agreed to self-monitoring process to track the extent of their adherence to a wide range of African and international human rights treaties and standards.¹⁹⁴ Hailed as a “welcome addition to pan-African institutional structure,”¹⁹⁵ and “the most innovative aspect of the NEPAD,”¹⁹⁶ its impact on curtailing corruption in Africa at large and Uganda in particular remains to be seen.¹⁹⁷ The Declaration establishing the mechanism reproduces or reiterates elements of the good governance

¹⁹⁴ See Hope, SR, K. R. (2005), “Toward Good Governance and Sustainable Development: The African Peer Review Mechanism.” *Governance*, 18: 283–311.

¹⁹⁵ Kanbur, R. (2004), “The African Peer Review Mechanism: An Assessment of Concept and Design,” *Politikon: South African Journal of Political Studies* 31(2):157- 166.

¹⁹⁶ Cilliers, J (2002) *NEPAD's Peer Review Mechanism*, Institute for Security Studies Paper 64.

¹⁹⁷ For an assessment of the APRM, see Kanbur, note 177 op. cit and Kajee, A., (2003/4) “Nepad’s APRM: A Progress Report – Practical Limitation and Challenges,” *South African Yearbook of International Affairs* pp. 243-258. See also Herbert, R. & S. Gruzd (2008), *The African Peer Review Mechanism: Lessons from the Pioneers*. Johannesburg: South African Institute of International Affairs; Odoi, N. J. (2008) *The Politics of Reform: The Role of the APRM in Uganda*, South Africa Institute of International Affairs. I have not considered it in depth here because even though Uganda acceded to it in 2003, it only completed its self-assessment report in 2007 and submitted it in 2008. Thus, APRM had minimal influence on the corruption-related inquiries analysed in this thesis.

discourse, proclaiming the commitment of African States to “just, honest, transparent, accountable and participatory government and probity in public life.”¹⁹⁸

In 2003, the UN finally adopted the first universal convention against corruption, thereby marking the apex of a decade of international anti-corruption law-making. The passing of these numerous treaties and declarations is evidence that there is indeed an emerging global consensus that corruption is a problem that must be addressed. Despite the enormous opportunity that these treaties represent, there are a number of problems that may present challenges to the implementation of the treaties. While it is beyond the scope of this thesis to delve into an in-depth analysis of each treaty, the next section provides a summary of the key elements of international anti-corruption law and a general appraisal of the opportunities and threats therein as elaborated in existing academic literature.

2.3.2 Key features of international anti-corruption law

The international law against corruption proposes a criminal law approach to dealing with corruption. For purposes of analysis, only the UNCAC will be relied on because it is currently the most universal international anti-corruption treaty. The UNCAC identifies the following types of behaviour as criminal offences: bribery of national public sector officials; bribery of foreign public sector officials; bribery of officials of public international organisations; illicit enrichment by a public official, evidenced by “a

¹⁹⁸ *African Union Declaration on Democracy, Political, Economic and Corporate Governance*, adopted by the Assembly of Heads of State and Government, 38th Ordinary Session of the OAU, Durban, South Africa, AHG 235/XXXVIII.

significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; bribery of private sector decision-makers; embezzlement by persons working in private sector entities; nepotism and favouritism in public sector recruitment and promotion.¹⁹⁹ Also criminalised are laundering the proceeds of corruption, concealment or continued retention of the proceeds of crime; aiding and abetting corruption and obstruction of justice.²⁰⁰

Unfortunately, the UNCAC does not specifically prescribe sanctions; preferring to leave the matter to be determined by domestic law. It is explicit in recommending prevention of corruption measures, which include exceptions to bank secrecy, prevention and detection of transfer so the proceeds of crime, recommending the establishment of financial intelligence units, encouraging the participation of society in anti-corruption, improving accounting procedures and introducing ethics-related codes of conduct.²⁰¹ Furthermore, the UNCAC encourages international cooperation between states²⁰² by prescribing mutual legal assistance, law-enforcement cooperation and extradition.

2.3.3 Problems and prospects in international anti-corruption treaties

The attempt to curb corruption via international legislation is bound to present numerous challenges, given the pre-existing problems with the international legal system in general, as well as the nebulous nature of the concept of corruption itself. With regard to the

¹⁹⁹ See articles 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the UNCAC.

²⁰⁰ Ibid, articles 23, 24 and 25.

²⁰¹ Articles 40, 52, 58, 13, 12 of the UNCAC.

²⁰² Articles 44, 46 and 48, *ibid*.

former, the age old debate as to whether international law is *really* law, due to the lack of a formal legislature and enforcement mechanism may pose a challenge. However, many scholars agree that this debate is now mute, as consent and willingness to be bound remain the foundation of international law.²⁰³

A much more immediate problem with regard to international anti-corruption law is the sheer number of treaties available. Carr observes that in such a situation, states are left wondering which treaty to ratify and implement or which one they can use as a basis for their domestic legislation. She justifiably worries that some states are simply “serial ratifiers”, and that ratification of international treaties can easily be reduced to a fad. She correctly points out that this is especially so for developing countries that may ratify in order to comply with anti-corruption conditionality and obtain much needed financial assistance. Even countries that do not need aid may engage in ratifications simply as a domestic exercise.²⁰⁴

The challenges to international regulation of a nebulous concept such as corruption are more pertinent. For instance, Carr criticises the lack of uniformity and comprehensiveness in scope, substance and procedure across the myriad conventions that have been passed. She points out how differences in the requirements for tackling corruption under different

²⁰³ See D’Amato, A. (1985) “Is International Law *Really* Law?” *NorthWestern University Law Review* 79 (5 &6): 1293-1314.

²⁰⁴ Carr, I (2007) “Fighting Corruption Through Regional and International Conventions: A Satisfactory Solution?” *European Journal of Crime, Criminal Law and Criminal Justice* (2007) 121-153; at 141. Uganda might be considered one such “serial ratifier” in order to keep up appearances as discussed in chapter 3.

conventions are likely to lead to uncertainty in implementation. One of the uncertainties she identifies is the scope of corrupt acts identified in different conventions. Some Conventions such as the OECD focus on bribery, whereas some such as the OAS and AU Conventions go as far as to criminalise illicit–unexplainable enrichment by public officials.²⁰⁵ Furthermore, Snider and Kidane point out that the lack of specificity on procedural and evidentiary requirements, which are to be determined by States parties, could create problems in cases of transnational corruption.²⁰⁶

Another area that lacks comprehensiveness is the stipulated sanctions for corruption. Some of the regional Conventions such as the AU and OAS are silent on sanctions, leaving it to States parties to decide how they will punish offenders. Snider and Kidane have also observed that the AU Convention and the UNCAC overlap in so many respects, including membership and duplication of obligations. Schroth decries the manner in which the AU Convention, in Article 5, neglects private sector corruption by requiring the improvement and strengthening of only public sector systems, excluding private sector accounts.²⁰⁷ None of the existing Conventions seeks to include officials from the NGO sector within its ambit, which as Snider and Kidane point out is a significant omission because of the enormous role that NGOs play at both national and global level.²⁰⁸ The cumulative effect

²⁰⁵ Carr, *ibid.*

²⁰⁶ Snider and Kidane, (2007) “Combatting Corruption through International Law in Africa: A Comparative Analysis, 40 *Cornell International Law Journal* 691.

²⁰⁷ Schroth, P. (2005), “The African Union Convention on Preventing and Curbing Corruption,” *Journal of African Law* 49: 24-38.

²⁰⁸ Snider and Kidane, *op. cit.*

of these factors is likely to be inaction or paralysis, as states ponder which model or recommendation to adopt.²⁰⁹

2.3.4 The significance of international anti-corruption law: from conditionality to legality

Despite the above problems, there is no denying that the passing of various international anti-corruption treaties is a step in a right direction. It signifies society's determination to fight corruption and may have a significant deterrent effect. Furthermore, it provides a crucial reference for prosecuting those who are found to be corrupt. It also provides a potent advocacy tool for NGOs and other civil society actors in their quest for accountability and transparency. On the whole, it may be said that international anti-corruption conventions help to facilitate international cooperation in the control and sanctioning of cross-border corruption; provide internationally agreed reference points that are useful for reform efforts; putting peer pressure on governments to reduce corruption; and providing fora in which governments and other actors can discuss corruption issues, align concepts and review anti-corruption efforts.

Thus, international anti-corruption law may be regarded as reinforcing the good governance discourse, by adding the crucial element of legality to the more elusive concept of conditionality. Although the international community of States made efforts to

²⁰⁹ Carr, op. cit.

address corruption prior to the dawn of the discourse, it is clear that it is only since the 1990s that the movement for international anti-corruption law gained momentum and culminated in the first universal anti-corruption treaty, the UNCAC, in 2005. The universalisation of anti-corruption in this manner re-emphasises the good governance discourse, which was under increasing criticism due to its perceived failure. Where good governance conditionality provided a means of coercion (carrot and stick) for tackling corruption, international law now promotes voluntary action by states. The development of international law thereby solves the problem regarding the fact that conditionality interferes with state sovereignty. Indeed, it solves many of the problems that bedevil governance related conditionality by making developing country states voluntarily take on the primary responsibility to fight corruption as opposed leaving it in the complex domain of the donor-recipient relationship.

2.5 Multi-National Enterprises: from bribe givers to moral entrepreneurs?

As previously mentioned, the global anti-corruption framework had its birth pangs in the US Foreign Corrupt Practices Act in response to the corrupt activities of United States based MNEs that came to light in the infamous Watergate scandal. The Act put in place stringent provisions for US firms, and its impact was such that the OECD anti-bribery Convention was initiated as a result of US prodding.²¹⁰ Hence, a discussion of the global anti-corruption framework would be incomplete without an analysis of their role in anti-

²¹⁰ Glynn, P., S. J. Kobrin, et al. (1997). "The globalization of corruption;" in K. A. Elloit (ed), *Corruption and the global economy*, Institute for International Economics: 7-27

corruption. From a past reputation that is tainted with bribe-giving in international business, MNEs have joined the bandwagon of anti-corruption and are re-casting themselves as moral entrepreneurs who prefer a level-playing field and therefore discourage corruption.

Indeed, Wrage and Wrage conducted a study of MNEs in the USA and concluded that for simple and prudent business reasons, MNEs prefer a clean and transparent international business environment. Contrary to the majority view that MNEs are purveyors of corruption and are guilty of offering bribes, Wrage and Wrage argue that MNEs can be viewed in an alternative light as moral entrepreneurs. Corruption increases the costs of doing business not only through money paid out in form of bribes, but also because of the delays and uncertainty it causes. They argue that companies with competitive good quality products and services avoid wasting time in opaque business environments characterised by rigged bidding process and insecure rule of law environment for settling commercial disputes. In addition, the enactment of the US Foreign Corrupt Practices Act, as well as the aggressiveness and success with which a few companies have been pursued and prosecuted by the US Justice Department, has made many MNEs wary of corruption. Thus, many US-based MNEs have supported the development of the global prohibition regime against corruption in their own interest. As Wrage and Wrage observe, naming them as moral entrepreneurs is not to whitewash their image, but to acknowledge the

important role they play in transnational business and their enormous potential to curtail corruption by establishing internal firm environments that are intolerant towards it.²¹¹

International Accounting Firms such as PriceWaterHouseCoopers (PWC) and Ernst and Young are also playing a role in transnational anti-corruption. The memories of the accounting firm Arthur Andersen and its role in perpetrating and covering up corruption in Enron are still fresh and are important in keeping the spotlight on these firms as the custodians and authors of accounts that reveal or conceal transnational corruption. From co-conspirators in corruption with companies such as Enron, they have now re-cast themselves as the Auditors who unearth corruption as opposed to covering it up. Thus PWC was hired by the Global Fund Secretariat in Geneva after a whistleblower in Uganda alerted the Fund to misuse of monies by Ugandan state and non-state agencies. PWC's audit confirmed that there was embezzlement, nepotism and abuse of office; leading to the suspension of the fund and the institution of a Commission of Inquiry.²¹²

The re-casting of MNEs from villains to heroes in anti-corruption discourse is being undertaken through their global umbrella grouping, the World Economic Forum (WEF). The WEF is a charitable foundation that brings together business leaders, politicians, academics, journalists and activists to "shape global agendas" on pressing issues. The Partnering Against Corruption Initiative (PACI) was launched by CEOs from the Engineering and Construction, Energy and Metals and Mining industries at the Annual

²¹¹ Wrage, S. and A. Wrage (2005). "Multinational Enterprises as "Moral Entrepreneurs" in a Global Prohibition Regime Against Corruption." *International Studies Perspectives* 6(3): 316-324

²¹² This will be further discussed in Chapter 5.

Meeting in Davos in January 2004. PACI is a platform for peer exchange on practical experience and dilemma situations, and cooperates with the IFIs and Transparency International in its work. Through PACI and their close alliance with other actors in the anti-corruption hegemonic discourse, MNEs are re-positioning themselves as part of the solution to anti-corruption.²¹³

The conflicting role of MNEs in global anti-corruption discourse can also be gleaned from the fact that it is largely from their perceptions that Transparency International's Corruption Perception Index is compiled. Thus, they are willing to give bribes in order to grab business and investment opportunities, and then to go on to tell the tale. This leaves developing country elites out in the cold as the main problem in the equation, the ones that "lack political will" to fight corruption and therefore the major hindrance to anti-corruption. No wonder this contradictory relationship remains one of anti-corruption's most elusive targets, despite decades of international legislation.

2.6 The emerging global anti-corruption norm

The discussion has so far looked at the main components of the global anti-corruption framework, that is, the various institutions and techniques through which the international fight against corruption has been conducted. These are; the IFI and bi-lateral donor conditionality that have made "good governance" a pre-requisite for financial aid, international law, international NGO activism, and MNEs' efforts to ensure a level business playing field. It would appear that good governance conditionality has played the

²¹³ World Economic Forum, *Partnering Against Corruption Initiative*, <http://www.weforum.org/issues/partnering-against-corruption-initiative>, accessed 20 January 2011.

biggest role, with the other factors bolstering its efforts in one way or another. The prominence of the good governance discourse in promoting anti-corruption globally is not surprising, given that this is the means that has the most “teeth,” that is, the threat of reduced aid for failure to comply with conditionality. On the other hand, international law lacks an enforcement mechanism, while INGOs and MNE’s similarly lack coercive means to back up their anti-corruption activism.

The expansion of the international framework against corruption through these various factors has led McCoy to opine that there is an emerging global anti-corruption culture or norm.²¹⁴ A norm is defined as a standard of appropriate behaviour for actors with a given identity. They are underlined by a strong sense of “oughtness.” Violation results in disapproval or stigma whereas conformity attracts praise or is so taken for granted that it elicits no reaction.²¹⁵ Norms are obeyed not because they are enforced, but because they are regarded as legitimate.²¹⁶ Common examples of international norms of inter-state behaviour include the prohibition of slavery and the right of self-determination as opposed to colonialism. Another example is the norm against racial inequality, which saw South Africa ostracised from the international community until the abolition of apartheid in 1990²¹⁷.

²¹⁴ McCoy, J. L. (2001). "The Emergence of a Global Anti-corruption Norm." *International Politics* 38: 65-90.

²¹⁵ Finnemore, M. and K. Sikkink (2005). "International Norm Dynamics and Political Change." *International Organization* 52(04): 887-917.

²¹⁶ Florini, A. (1996). "The Evolution of International Norms." *International Studies Quarterly* 40(3): 363-389

²¹⁷ Klotz, A. (1995), *Norms in international relations: The struggle against apartheid*, Cornell University Press.

International norm evolution has been attributed to the “moral proselytising” of “transnational moral entrepreneurs,” who motivated by empathy, altruism and ideational commitment, frame issues for debate and adopt a range of strategies to convince the public of the rightness of their cause.²¹⁸ Organisations such as Transparency International are considered as moral norm entrepreneurs that exist solely for the purpose of promoting a particular norm. Such organisations then try to persuade state actors to endorse the norm. Endorsement by states usually results in the next stage of norm creation, whereby the norm becomes institutionalised in international law.

Institutionalisation defines what the norm is and what amounts to its violation. Once institutionalised at the international level, a certain critical mass of states must adopt the norm in order to achieve what political scientists have called a “tipping point,” or “threshold,” that is, a point at which more and more countries begin to adopt the norm and international and transnational norm influences become more important than domestic politics for bringing about norm change. At this stage, international socialisation through emulation and praise for conformists in contrast to ridicule for violators allows the norm to become more and more entrenched or internalised to an extent where conformity is taken for granted.²¹⁹

²¹⁸ Nadelmann, E.A. (1990) “Global prohibition regimes: the evolution of norms in international society” *International Organisation* 44:479-526.

²¹⁹ Finnemore and Sikkink, op. cit.

McCoy suggests that the emergence of the global anti-corruption norm has been achieved through awareness raising, institutionalization through the development of legal and policy instruments, and global adoption, internalization, and adherence. She in turn attributes the facilitation of the process to the changing global environment, specifically the end of the Cold War and the spread of the principles of democracy and liberalism; social interactions and the information revolution that contributed to wide-spread diffusion of new information about the causes and costs of corruption, as well as strategies to combat it; and internal processes within the nation-state, from an explosion of NGOs and a freer, more investigative media, to changing calculations among political leaders about the costs of corruption. However, she points out that the process is still incomplete and that in order for the norm to be said to exist, it will require both international organizations and domestic civil society actors to demand and monitor the implementation and enforcement of current commitments and to establish accountability.

Thus, from Finnemore and McCoy's analyses, it can be inferred that the global anti-corruption norm is at the third stage of evolution (institutionalisation), with indications that it is moving towards the tipping point or threshold. This can be inferred from the number of countries (140) that have ratified the UNCAC.²²⁰ This illustrates the significance of anti-corruption on the current global governance agenda.

²²⁰ United Nations Office on Drugs and Crime, at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>, last accessed 22 September 2010.

2.7 Chapter Conclusion: An emerging consensus undermined by contradictions

Anti-corruption has been shown to be a significant item on the global governance agenda. It is a complex arena of various state and non-state actors motivated by an entanglement of interests. These actors employ a variety of techniques to tackle corruption, now recognised as a universal problem. The most prominent of these techniques is the discourse of good governance implemented through the mechanism of PRSP conditionality. Good governance has been riddled with contradictions, and therefore it has both promoted and undermined the values of transparency, accountability, the rule of law and participation, on which it is based. Thus, it would be fair to say that good governance has been neither successful nor unsuccessful, but has registered success as well as failure in accordance with its inherent contradictions.

The paradoxes that characterise global anti-corruption inevitably impact on anti-corruption in the domestic arena by providing leeway for governments to “selectively and strategically integrate (good governance discourse) into existing conceptions and practices of political economy.”²²¹ Commissions of inquiry is one way in which the Ugandan government has selectively and strategically internalised the discourse of good governance. This will be elaborated upon in the next chapter.

²²¹ Polzer, T. (2001), op. cit, at p. 5.

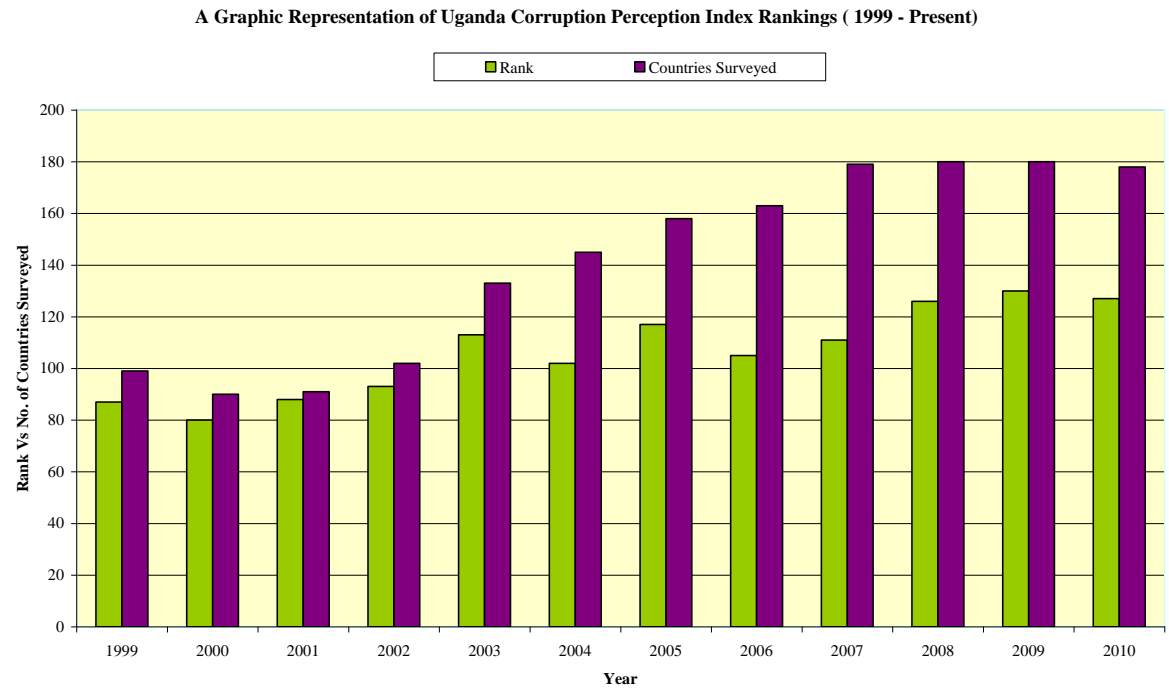
Chapter 3

The domestic framework for anti-corruption in Uganda: how to be a “good governor” without undermining your support base (part I)

3.1 Introduction

In the previous chapter, it emerged that the implementation of the good governance agenda in countries such as Uganda has met with limited success and that the government begrudgingly admits to this fact in its PRSP progress reports. The main evidence for Uganda’s lack of progress with anti-corruption is its performance in Transparency International’s Corruption Perception Index (CPI), which has been rather dismal over the past decade or so.

Table 1



The graph shows that there has been little or no improvement in corruption perceptions despite several years of implementing good governance reforms. This *prima facie* evidence of the limited impact that the good governance discourse had had on Uganda.

Nevertheless, in spite of its poor performance in the CPI, Uganda has registered some success in fighting corruption. One of the areas in which the good governance agenda has been quite successful is in spawning an array of anti-corruption laws, policies and institutions. According to Global Integrity,

Uganda scores nearly perfectly in an assessment of the legal framework for fighting corruption - enforcement of these laws, however, is another issue. In practice, performance is very weak...the gap between the legal code and actual performance is the largest recorded [in 55 countries] in 2007," suggesting deep problems in the country's governance...²²²

Global Integrity hints at the role of foreign aid in fomenting this situation:

...Uganda [and Bosnia and Herzegovina] have the dubious distinction of boasting the biggest "implementation gaps" of all countries covered in the Global Integrity Report: 2009 - that is, the gap between their anti-corruption laws "on the books" and the actual enforcement of those same laws. These two countries are also among the largest recipients of international donor assistance, lending credence to some who argue that political leaders in aid-dependent countries are skilful at

²²² Global Integrity (2007), *Global Integrity Report – Uganda*, at <http://report.globalintegrity.org/Uganda/2007>, accessed 01 February 2011.

establishing laws and institutions to meet foreign donor requirements despite those same laws and institutions failing to deliver for ordinary citizens.²²³

The 2009 global integrity rankings show that Uganda scores 99 % on legal framework against corruption and 45% on implementation. Thus the implementation gap now stands at 54%. Global Integrity concludes:

Uganda is an extreme example of the distance between laws on the books and the reality of putting those anti-corruption safeguards into practice.²²⁴

Table 2 – Uganda’s Global Integrity Index 2006-2009

Year	2006	2007	2008	2009
<i>Legal Framework</i>	100/100	95/10	99.6/100	99/100
<i>Actual Implementation</i>	50/100	47/100	49/100	45/100
<i>Implementation Gap</i>	50(huge)	48(huge)	51(huge)	54(huge)
<i>Overall Rating</i>	76 (moderate)	70 (moderate)	72 (moderate)	69 (weak)

The wide gap between anti-corruption rhetoric and practice shows the ineffectiveness of foreign aid and good governance conditionality in Uganda. The discussion in the previous chapter analysed some of the reasons for this paradox, such as the nature of foreign aid itself, particularly the manner in which it distorts accountability by making recipient

²²³Global Integrity (2009), “Foreign aid may not help anti-corruption enforcement in aid-dependent countries,” at <http://report.globalintegrity.org/globalindex/findings.cfm#ForeignAid>, accessed 01 February 2011.

²²⁴ Ibid., at <http://commons.globalintegrity.org/2009/12/uganda-where-theres-will-theres-way-and.html>, accessed 01 February 2011.

governments accountable to donors instead of their citizens; and the self-interest and double standards of donors and IFIs exhibited through the prioritisation of capitalistic and strategic interests over altruistic motives.²²⁵ In addition, some scholars continue to attribute the failure of good governance reforms to the lack of political will at the highest levels of recipient governments to fight corruption. This lack of political will is in turn linked to the concept of neo-patrimonialism, which will be elaborated shortly.

This chapter analyses how the good governance reforms promoted by donors are undermined by “lack of political will” and/or neo-patrimonialism in Uganda. Part 2 looks at the legal and institutional framework as evidence of the Ugandan State’s rhetorical commitment to and internalisation of the good governance discourse. Part 3 looks at the role of non-state actors; the Media, the Arts and Civil Society, whose growth and expansion has also been directly and indirectly facilitated by good governance conditionality. Part 4 explores neo-patrimonialism as the reason for the disjuncture between the good governance discourse and its actual implementation in the domestic context. It illustrates the skewed manner in which it is implemented, by covert and overt actions that subvert its stated aims. The chapter concludes by proposing that commissions of inquiry have arisen as the ideal stop-gap mechanism by which the Uganda government attempts to reconcile the contradictory aims of implementing the good governance discourse whilst simultaneously subverting it.

²²⁵ Refer to the discussion in Chapter 2, at 2.2.4.

3.2 Uganda’s “near perfect” anti-corruption framework

As pointed out above, Global Integrity says that Uganda scores “nearly perfectly” in an assessment of the anti-corruption legal framework (99.6% out of a maximum possible score of 100%). The credit for this goes to more than two decades of good governance conditionality and substantial investment by donors and IFIs in anti-corruption in Uganda. In order to obtain aid, Uganda must show that it is a “good governor.” This involves explicit anti-corruption commitments on the part of the government of Uganda in return for aid. A good example of how anti-corruption conditionality work can be seen in a 2007 agreement between the Ugandan Government and USAID, specifically titled as “Agreement ... for Strengthening Uganda’s capacity to fight corruption.” In this agreement, USAID commits to provide a grant of \$10,446,180 to the Ugandan Government, and the latter explicitly commits to undertake a number of actions to fight corruption. These are:

- Assist in passing the Audit Bill to strengthen the effectiveness of the OAG;
- Reconsider Civil Service Remuneration Policies to enable performance based salary structures for officers directly involved in anti-corruption activities such as prosecutors and investigators;
- Ensure that the Anti-Corruption Court is established that judges and magistrates are appointed and the Court begins to function in 2007/8 Financial Year;

- Ensure that laws required to support the Anti-Corruption Court, such as the Prevention of Corruption Bill and Qui-Tam legislation are presented before Parliament for debate.²²⁶

PRSPs and PRSP progress reports also provide details of how the donors and IFIs have been involved in shaping the existing anti-corruption framework in Uganda. For instance, in the Uganda PRSP Progress Report 2003, the government tried to show how it was complying with conditionality so that further tranches of aid could be released by the IFIs, saying:

The government has successfully undertaken efforts to address the problem of corruption, for example... the Leadership Code Act was passed by Parliament in April 2002 and this calls for mandatory public declarations of the personal assets and liabilities for leaders and their close family members. The IGG Bill was passed by Parliament in December 2000 and it is now law after being assented to by the President in March 2002. The Directorate of Ethics is also spearheading a review of the Prevention of Corruption Act 1970 and the focus is on harmonising the legislation on corruption and to strengthen the definition of corruption.²²⁷

Similarly, priority areas for action (conditionality) in the 2004/5-2007/8 PRSP included the following a number of actions to improve transparency and accountability. These are worded imperatively, illustrating the coercive nature of conditionality. For example:

- Government will seek passage of the Auditor General Bill.

²²⁶ Development Assistance Grant Agreement between the Government of the USA and the Government of Uganda, March 29, 2007, at <http://www.mcc.gov/documents/agreements/daga-uganda.pdf>, accessed 26 January 2011.

²²⁷ GoU, MOFPED (2003) Poverty Status Report / PRSP Progress Report, at <http://www.imf.org/external/pubs/ft/scr/2003/cr03301.pdf>, accessed 26 January 2011, pp. 82-83

- Government will implement at least three value for money audits each year, and mount a pilot study to estimate the scale of public corruption.
- Government will computerise the audit function in the Auditor General's office, complete the audit of classified expenditure, and establish the internal audit function in all ministries.
- Government will complete the recruitment and training of 80 procurement officers and establish a national association for procurement professionals.²²⁸

Indeed, IFIs and bi-lateral donor agencies have invested significant resources in anti-corruption in Uganda. For example, the DANIDA Uganda Country Assistance Strategy proclaims some of the chief aims of Danish-Uganda cooperation's as being "to promote good governance, human rights and democratisation by supporting the judicial system, the Inspector General of Government, the local authorities as well as civil society organisations (CSOs)."²²⁹ Donors give direct budget support known as "Poverty Reduction Support Credits" to anti-corruption agencies through the Uganda Joint Assistance Strategy Framework (UJAS).²³⁰ In 2005-2009, the strategy proclaimed that "support to the Department of Ethics and Integrity and to the Inspector General of Government will strengthen Uganda's anticorruption institutions and help to implement the government's National Strategy to Fight Corruption."²³¹ In 2004/5, for example, 204.2

²²⁸ Government of Uganda, Ministry of Finance, Planning and Economic Development, Poverty Eradication Action Plan (PEAP) 2004/5-2007/8, p. 157.

²²⁹ Ministry of Foreign Affairs, Denmark, *Uganda-Denmark Partnership - Strategy for Development Cooperation* 2004-2008, p. 9.

²³⁰ World Bank et al, *Joint Assistance Strategy for the Republic of Uganda* (2005-2009), at <http://siteresources.worldbank.org/INTUGANDA/Resources/UJAS.pdf>, accessed 25 January 2011.

²³¹ Ibid, p. 35

billion Uganda Shillings was budgeted for accountability, of which more than 50% came from donor funds.²³²

Thus we see that the Uganda government has complied with conditionality by establishing and reforming anti-corruption laws and institutions. It has also allowed the judiciary a degree of independence, liberalised the media and given civil society organisations some space and visibility in order to show that it is committed to the principles of good governance. The enactment of laws and establishing institutions appears to be the minimum necessary to keep up appearances and ensure that aid is not cut off. Enforcement of laws and policies, however, is the arena in which the cat and mouse game is played; as will shortly be discussed.

3.2.1 The legislative framework

The supreme law of the country, the Constitution of 1995, clearly proclaims the nation's commitment to a government that is accountable to the people. The National Objectives and Directive Principles of State Policy laid down by the Constitution proclaim that:

All public offices shall be held in trust for the people;

All persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people;

All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices.²³³

²³² GoU (MOFPED), *The Uganda 2004/5 Budget: A Citizen's Guide*, <http://www.finance.go.ug/docs/citizensguide.pdf>, accessed 25 January 2011. Exchange rate: 1 USD is equal to Uganda Shillings 2,300.

In line with the above, the government of Uganda has enacted a number of laws against corruption. There are laws that establish and regulate anti-corruption institutions, such as the Inspectorate of Government Act which provides for the role and functions of the inspectorate,²³⁴ the Public Procurement and Disposal of Assets Authority Act²³⁵ and the National Audit Act²³⁶ which describes the role and functions of the Auditor General. The Leadership Code Act is an important piece of legislation whose enforcement is the responsibility of the Inspectorate of Government. However, the key piece of anti-corruption legislation is the Anti-Corruption Act 2009.²³⁷ Other relevant laws are the Whistleblowers Act and the Access to Information Act.

It is important to note that the existing legal framework is relatively new and was not yet in force at the time of the commissions of inquiry analysed in this study, which were appointed between 1999 and 2005/6. During that time period, the laws against corruption were contained in the Penal Code Act, a 1950 law²³⁸ and the Prevention of Corruption Act which was enacted in 1970.²³⁹ Under the Penal Code, corruption was covered by section 87 on abuse of office, defined as “a government officer doing an arbitrary act prejudicial to the interests of the employer,” punishable by 7 years of imprisonment. Section 268 defined embezzlement as the theft by a government employee of any “chattel,

²³³ Constitution of Uganda, (1995) National Objectives and Directive Principles of State Policy, XXVI.

²³⁴ Act No. 5 of 2002.

²³⁵ Act No. 1 of 2003.

²³⁶ Act No. 7 of 2008.

²³⁷ Act No. 6 of 2009.

²³⁸ Cap. 120, Laws of Uganda.

²³⁹ Cap. 121, Laws of Uganda

money or valuable security” belonging to the government, and attracted a maximum penalty of 14 years. Section 269 on “causing financial loss” made it a crime to “do or omit to do any act knowing or having reason to believe that such act or omission will cause financial loss to the Government.” The maximum penalty for this was 14 years. The Prevention of Corruption Act criminalised the solicitation and offering of bribes, which was punishable with up to 10 years of imprisonment.²⁴⁰

Thus, there was a need to harmonise and modernise the law on corruption. In any case, as previously discussed, the law was rarely enforced.²⁴¹ Hence, as seen above, donors continued to put pressure on the Uganda government to improve its record on anti-corruption by strengthening the law and institutions, culminating in the passing of the Anti-corruption Act of 2009.

The Anti-Corruption Act 2009

The Anti-Corruption Act, aptly titled in accordance with present-day good governance parlance, proclaims that it is “an Act to provide for effectual prevention of corruption in both the public and private sector.”²⁴² We saw earlier that the government aimed to “strengthen” the definition of corruption, which previously focused only on bribery, embezzlement and abuse of office in the Prevention of Corruption Act 1970. Thus, the 2009 Act defines corruption in a fairly wide manner that includes bribery, embezzlement

²⁴⁰ Sections 2-5 of the Prevention of Corruption Act.

²⁴¹ See the discussion in Chapter 1, at 1.2 on corruption and impunity in the privatisation process.

²⁴² Long title.

of government monies, misuse of public resources, abuse of office and neglect of duty.

The Act acknowledges that corruption is a “syndicate” crime and makes it a crime to participate in corruption as a principal, co-principal, agent, instigator, accomplice or accessory after the fact in any act of corruption.²⁴³

It is a crime to participate in a decision that involves a conflict of interest.²⁴⁴ Other offences defined under the Act include:

- Abuse of office, defined as doing or directing to be done an act prejudicial to the interests of the employer, in abuse of the authority of the perpetrator’s office;²⁴⁵
- Sectarianism, that is, doing a favour or offering advantage on the basis of religion, sect, ethnic group or place of origin;²⁴⁶
- Nepotism, which means doing a favour for a person on the basis of blood relations;²⁴⁷
- Embezzlement of funds or property;²⁴⁸
- Causing financial loss;²⁴⁹
- Fraudulent disposal of trust property by a trustee;²⁵⁰
- False accounting and false claims by officials;²⁵¹
- Impersonating public officers or threatening injury to public officers to do anything, forbear or delay its doing;²⁵² and lastly

²⁴³ Section 2 of the Anti-Corruption Act 2010.

²⁴⁴ Section 9, *ibid.*

²⁴⁵ Section 11.

²⁴⁶ Section 12

²⁴⁷ Section 13.

²⁴⁸ Section 19.

²⁴⁹ Section 20.

²⁵⁰ Section 21.

²⁵¹ Sections 22 and 24.

- Illicit enrichment.²⁵³

The Act seeks to deter corruption by providing for stiff sentences: the maximum penalty prescribed for various offences is 10 years or a hefty fine running into millions of Uganda shillings.²⁵⁴ The Court is also empowered to demand recovery and repayment of money or property in all cases. Thus it can be seen that in the Act is a strong piece of legislation which if enforced, would have an impact on controlling corruption in Uganda. As of yet, nobody has been convicted under the new law because the system is still clogged with old cases.²⁵⁵

The Leadership Code Act, 2002

The Leadership Code Act was originally enacted in 1992 and amended in 2002. Its main feature is the requirement for all public officers to declare their income, assets and liabilities bi-annually.²⁵⁶ The aim of this provision is to prevent illicit gain by leaders, and would go a long way in tackling corruption if it was effectively enforced. One of the main reasons why the Code was amended was that Asset Declarations were to remain secret, as members of the public were not allowed access to them for purposes of verification. Under section 7 of the current law, declarations are accessible to the public upon lodging of a formal request to the IG.

²⁵² Sections 17 and 18.

²⁵³ Section 31.

²⁵⁴ See section 26 on punishment for offences.

²⁵⁵ Izama, A (2009) "Jail is a heartbeat away as new law makes hiring a relative a crime," *The Daily Monitor*, 25 October 2010, at <http://allafrica.com/stories/200910260072.html>, last accessed 20 February 2010. The journalist, Mr. Izama asked the Registrar of the High Court whether any convictions had been secured and he responded that none had been achieved because of the case backlog.

²⁵⁶ Section 4, Cap. 168, Vol. XXI, Laws of Uganda.

The Code prohibits leaders from participating in decisions where they have a conflict of interest, obliging them to declare any interest that they might have in any matter that they preside over. Failure to declare their interest may result in the leader ceasing to be a member of the public body in question, and making good any losses that might arise as a result of the decision.²⁵⁷

The Act declares that gifts or other benefits in kind given to a leader on any public or ceremonial occasion, or commission to a leader on any transaction, shall be treated as a gift or donation or commission to the government or institution represented by the leader and shall be declared to the Inspector General. The Act goes on to clarify that leaders may accept personal gifts or donations from relatives and friends to such an extent and on such occasion as is recognised by custom. Furthermore, they may accept souvenirs and ornaments whose value does not exceed 100,000 Uganda shillings (about US\$ 50).²⁵⁸ The Code also prohibits influence-peddling, abuse of office and public property, nepotism and cronyism.²⁵⁹ Breach of the Code may lead to a warning, a caution, demotion, dismissal from or vacation of public office.²⁶⁰

Section 18 of the Code provides that any person who alleges that a leader has committed a breach of these Code may lodge a complaint to the Inspectorate, which shall inquire into the matter and make a decision regarding whether or not the leader was in breach of the

²⁵⁷ Sections 8 & 9, Leadership Code Act.

²⁵⁸ Section 10.

²⁵⁹ Sections 12 and 13.

²⁶⁰ See parts II and III of the Code.

Code. Such a decision must be contained in a detailed report that sets out the nature and circumstances of the breach, the evidence received, the findings and decision made. The Inspectorate is required to communicate the decision to an authorised person (appointing authority of the leader) for implementation. The decision may be a warning, caution, dismissal, demotion or vacating the office. The manner in which this provision was originally drafted ignored the necessity of the Inspectorate observing natural justice in the making of its decisions, and led to civil action against the Inspectorate by Kakooza Mutale, a Presidential Advisor on Security.²⁶¹ Hence, the Act was amended to include section 26, which obliges the Inspectorate to observe the rules of natural justice when inquiring into allegations under the Code.

The Inspectorate is given the powers and rights of the High Court as regards attendance, swearing and examination of witnesses, production and inspection of documents as well as enforcement of its orders.²⁶² In addition, officers of the Inspectorate are immune from civil or criminal liability when performing their duties.²⁶³ Inquiries, proceedings and reports of the Inspectorate are also protected from quashing by certiorari due to error on the face of the record.²⁶⁴

All in all, the Leadership Code Act is a comprehensive law with detailed provisions that could prevent officers from abusing their public powers for private gain. Indeed, it is no

²⁶¹ The case is considered in greater detail below; pp.148-149.

²⁶² Section 23.

²⁶³ Section 34.

²⁶⁴ Section 36.

wonder that Uganda scores highly on anti-corruption laws on the Global Integrity Scorecard. It does however, have some weaknesses, which will be analysed later on in this chapter.

The Whistleblowers' Protection Act

The Whistleblowers' Protection Act²⁶⁵ is intended to provide an enabling environment for whistleblowers to provide information on acts of corruption without fear of reprisal. The long title proclaims it as a law "to provide for the procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corrupt practices; to provide for the protection against victimisation of persons who make disclosures..."

Disclosures may be made orally or in writing to authorised officers, defined as including the Speaker of Parliament or Deputy Speaker of Parliament, the Executive Director of National Environment Management Authority in case of environment issues, Resident District Commissioner, a Senior Ethics Officer with the Directorate of Ethics and Integrity, a human rights commissioner with Uganda Human Rights Commission, the Director of Public Prosecutions, an inspectorate officer of the Inspectorate of Government and a police officer not below the rank of Assistant Inspector of Police.²⁶⁶

²⁶⁵ Act No. 6 of 2010.

²⁶⁶ Ibid, section 1.

Following the making of a disclosure, a whistleblower should not be victimised or be subjected to criminal or civil action stemming from his or her role as a whistleblower and the state must protect a whistleblower whose family is endangered as a result of a disclosure.²⁶⁷ The Act further provides that all disclosures are to be "expeditiously" investigated and that "appropriate" action has to be taken immediately.²⁶⁸ Where the whistle blowing results in the recovery of monies, the whistleblower shall be entitled to 5% thereof.²⁶⁹

The Whistleblowers Act has been described as “ambitious” even whilst conceding its potential to curtail corruption in Uganda.²⁷⁰ The question that remains is whether the protection it offers would be adequately enforced.

The Access to Information Act

This law was enacted in 2005 “to provide for the right of access to information pursuant to article 41 of the Constitution; to prescribe the classes of information referred to in that article; the procedure for obtaining access to that information, and for related matters.”²⁷¹

The Act applies “to all information and records of Government ministries, departments, local governments, statutory corporations and bodies, commissions and other Government

²⁶⁷ Ibid., sections 9 and 10.

²⁶⁸ Section 8.

²⁶⁹ Section 19.

²⁷⁰ International Whistleblowers,(2010), “Uganda: Get Paid for Leaking Graft Secrets,” <http://www.internationalwhistleblowers.com/whistleblowers/39-whistleblowers-news/656-uganda-get-paid-for-leaking-graft-secrets.html>, accessed 31 January 2011.

²⁷¹ Long Title, Act No. 6 of 2005.

organs and agencies, unless specifically exempted by this Act.”²⁷² Its purpose is stated as including the promotion of an efficient, effective, transparent and accountable Government; protection of persons disclosing evidence of contravention of the law, maladministration or corruption in Government bodies; promotion of transparency and accountability in all organs of the State by providing the public with timely, accessible and accurate information; and empowering the public to effectively scrutinise and participate in Government decisions that affect them.²⁷³

The Act provides that all public bodies shall designate their Chief Executives as information officers with responsibility for compiling information about the body and ensuring that it can be accessed by the public.²⁷⁴ Requests for information should be made in writing, although oral requests may be entertained and reduced into writing by an officer of a public body, and a response should be received within 21 days of making the application.²⁷⁵ As with other pieces of legislation, the outstanding issue is its application and enforcement.

3.2.2 The institutional framework – seven agencies (and still counting)?

The primary anti-corruption agency is the Inspectorate of Government (IG) which is constitutionally independent and mandated to prevent, investigate and prosecute corruption. A number of other bodies have functions closely related to anti-corruption

²⁷² Section 2, *ibid.*

²⁷³ Section 3, *ibid.*

²⁷⁴ Sections 7 and 8, *ibid.*

²⁷⁵ Sections 11 and 16, *ibid.*

action but have other responsibilities that are not solely focused on anti-corruption. These include the Anti-Corruption Court, Directorate of Public Prosecution (DPP), Criminal Investigation Directorate (CID) the Public Procurement and Disposal of Public Assets Authority (PPDA), the Parliamentary Committees such as the Public Accounts Committee (PAC) and the Committee on Statutory Authorities and Enterprises (COSASE) , the Auditor General and the Directorate of Ethics and Integrity. The latter (DEI) coordinates anti-corruption policy and provides political leadership. All the above agencies cooperate closely with one another through quarterly meetings of the Inter-Agency Forum (IAF). There are also proposals for a Leadership Code Tribunal²⁷⁶ and even for an “Accountability Sector Secretariat” attached to the Directorate of Ethics and Integrity whose purpose will be to coordinate and monitor all government agencies with an anti-corruption mandate.²⁷⁷ The Anti-corruption Coalition of Uganda, (ACCU) an umbrella organisation of NGOs involved in anti-corruption advocacy activities, had also recommended an independent body to handle whistle blowing, although this proposal was ignored when the Bill was enacted into law.²⁷⁸

The Inspectorate of Government (IG)

The Inspectorate of Government is a Constitutional Office, established under article 223 of the 1995 Constitution and the Inspectorate of Government Act of 2002 . It consists of

²⁷⁶ The Leadership Code Tribunal is provided for under Article 235(a) of 1995 Constitution as amended in 2005, but has never been set up.

²⁷⁷ Among, B. (2009) “Do we need a new anti-graft body?” *The New Vision*, 25 April 2009, at <http://allafrica.com/stories/200904271527.html>, accessed 02 February 2011.

²⁷⁸ Kagaba, C. (2010), “Whistleblower deserves deeper State Protection,” *The Daily Monitor*, 7 March 2010, at <http://allafrica.com/stories/201003080810.html>, accessed 02 February 2010.

an Inspector General of Government (IGG) and two Deputy Inspectors-General. The IGG and deputies are appointed by the President with the approval of Parliament and have wide ranging terms of reference covering all public offices in Uganda. The IG serves not only as the government's general ombudsman, but is also responsible for the prevention, detection, investigation and prosecution of corruption; in addition to public education and information on corruption generally.²⁷⁹ Thus it can be said that the IG is Uganda's Anti-Corruption Commission and the most important agency in the fight against corruption. The IG was originally established in 1986 when the current NRM had just captured power. One of their stated priorities at that time was to fight corruption in public office, for which they placed the blame on the previous "bad" regimes of Milton Obote and Idi Amin. Hence the establishment of the office was indicative of a new era of transparency and accountability.

The IG is responsible for the enforcement of the Leadership Code Act 2002 and along with the Directorate of Public Prosecutions, the Anti-Corruption Act of 2009.

The Auditor General

The Auditor General is a Constitutional Office established under the 1995 Constitution and the National Audit Act 2008 as the office with responsibility for ensuring that all public accounting in Uganda is done in accordance with the law.²⁸⁰ To this end, the

²⁷⁹ See Sections 8 & 9, Part III of the Inspectorate of Government Act 2002.

²⁸⁰ The National Audit Act, No. 7 of 2008.

Auditor General is empowered to audit all public accounts of all public offices under central and local government, whether executive or judicial.²⁸¹ Where a malpractice is revealed, the Auditor General is authorised to disallow the transaction in question and make a report to the Speaker of Parliament, who in turn refers the matter to the appropriate Committee of Parliament.²⁸² In the exercise of his/her functions, the Auditor General has been granted wide powers of access to all books and accounts of government, as well as powers to conduct searches and to call any person to provide relevant information.²⁸³

The office is headed by the Auditor General who is assisted by the Assistant Auditor General. The OAG has a total workforce of 338 employees of which 254 are technical staff and 84 are administrative and support staff. With 62 professional accountants the office is currently the largest employer in Uganda of qualified accountants.

The Auditor General is one of the least applauded anti-corruption agencies in Uganda. Perhaps because it does not take action on its own but only refers the irregularities it uncovers to Parliament, it does not attract as much media attention as say, the Inspectorate of Government. It conducts a staggering amount of work that does not attract media attention until it reaches the Public Accounts Committee (PAC) as a scandal. An insight into the large volume of work can be gleaned from its 2009 Annual Report to Parliament.

²⁸¹ Ibid, sections 13 -17.

²⁸² Ibid., section 20

²⁸³ Ibid, section 24.

The Directorate of Audit (Central Government) completed and reported on 219 audits consisting of Ministries, Departments and Agencies (83), Projects (131) and special audits (5). In addition, the Directorate issued 71 audit warrants for recurrent, development and statutory withdrawals of funds from the consolidated fund account amounting to Shs. 5,638,472,056,063; and, inspected 70 Tertiary Institutions under the Ministry of Education and Sports.²⁸⁴

The Directorate of Audit (Local Governments) completed and reported on 1,662 accounts. They included Higher Local Governments (195), Regional Referral Hospitals (11), special audits (15) and Lower Local Governments (1,441). The Directorate of Audit (Statutory Corporations/VFM) completed and reported on 155 accounts. A further audit of (43) accounts are work-in progress. In addition, the Directorate also undertook five (5) special audits that were requested for in the period. The newly established Value for Money (VFM) Audit Department with only 17 staff managed to complete and report on ten (10) VFM audits with ten (10) other studies as work in progress.²⁸⁵

The Auditor General is especially crucial to the effectiveness of Parliament's oversight committees, in particular, the Public Accounts Committee (PAC) for Central Government Ministries and Departments, the Local Governments' Public Accounts Committee and the Committee on State Enterprises, Commissions and Authorities. The reports and guidance

²⁸⁴ Office of the Auditor General (2009), Report to Parliament, available at http://www.oag.go.ug/annual_reports.php?dId=1, accessed 27 January 2011.

²⁸⁵ Ibid.

of the Auditor General enable the Parliament to effectively perform its role of overseeing the executive and ensuring that it is accountable for its handling of public monies. As an insider “whistleblower” the Auditor General’s contribution to the success of anti-corruption initiatives in Uganda is significant.

Public Procurement and Disposal of Assets Authority (PPDA)

The PPDA is among the new anti-corruption arsenal established under the donor and IFI public accounting and management reforms established by Act of Parliament in 2003. The previous system featured a Central Tender Board in the Ministry of Finance, which was responsible for all procurements whose value exceeded \$1000. The system was slow and protracted, as well as being riddled with corruption. It is estimated that more than 90 per cent of complaints sent to the IGG are procurement related. Concomitantly, 65% of Uganda’s total budget passes through the public procurement system each year. Hence Uganda International Development Partners were keen for the establishment of a more transparent, efficient and streamlined system.²⁸⁶

Accordingly, in 2003, the Public Procurement and Disposal of Assets Act was passed.²⁸⁷

The Act establishes a regulatory body known as the Public Procurement and Disposal of Assets Authority that is responsible for training and capacity building in procurement matters in all public agencies; ensuring that all public procurement is carried out in

²⁸⁶ U4 Anti-Corruption Resource Centre (2009) *Overview of Corruption in Uganda*, Expert Answer prepared by Marie Chene and Robin Hodess, at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=191>, accessed 26 January 2011.

²⁸⁷ Act No. 1 of 2003

accordance with the law; conducting procurement audits and investigating complaints.²⁸⁸

The Act emphasises transparency and accountability in procurement, by providing detailed rules for advertising and public display of bid opportunities, public opening of bids, and public notices for best evaluated bidder and contract awards.²⁸⁹ Dissatisfied suppliers may seek administrative review of the process.²⁹⁰ Providers who are found to commit offences such as bribery may be suspended and disciplinary action taken against errant public officers who manipulate the process.²⁹¹

One of the innovations introduced by the new law is the public naming and shaming of company and individual providers who are involved in corrupt procurement practices. The PPDA is empowered under Regulation 351 of its regulations to suspend a provider from participating in public procurement or disposal proceedings. Seven companies and their respective directors, have so far been suspended and publicly named.²⁹²

Police Criminal Investigations Directorate (CID)

Originally referred to as the Fraud Squad, the Uganda Police Force Criminal Investigations Directorate Anti-Corruption Department has now been re-named to reflect the on-going emphasis on anti-corruption within Uganda's governance framework. The role of the department is the investigation of corruption-related crime, categorised under

²⁸⁸ Ibid, section 6.

²⁸⁹ Ibid, parts IV, V and VI.

²⁹⁰ Ibid, part VII.

²⁹¹ Ibid.

²⁹² See Suspended Providers' Register, at, http://www.ppda.go.ug/index.php?option=com_content&task=view&id=23&Itemid=41, accessed 26 January 2011.

Economic Crime. According to the 2008 Annual Crime Report, 13,162, cases of economic crime were reported and investigated, compared to 9,978 cases reported in 2007; an increase of 40%. However, crimes specifically classed as corruption were only 46. In 2009, only 95 corruption cases were reported and investigated. These low numbers reflect the lack of success in fighting corruption in Uganda.²⁹³ The factors responsible for this discrepancy are discussed later on in this chapter.

The CID has received foreign assistance from the UK Serious Fraud Office (SFO) and the European Anti-Fraud Office (OLAF) to assist in the investigation of cases that arose from the Global Fund scandal, which is discussed in greater detail in Chapter 5.²⁹⁴ The Forensic Services Department is currently being strengthened to enable the Police Force to improve its performance in this area. There are plans for a modern analytical laboratory that conducts finger print analysis, DNA analysis, ballistics, and toxicology tests. At present, the CID is mostly limited to Scene of Crime analysis to search for physical evidence, which is not very relevant in corruption related crime.²⁹⁵

Directorate of Public Prosecutions

The Directorate of Public Prosecutions is a Constitutional Office consisting of a director and two deputies. Article 120 of the 1995 Constitution provides that it shall be

²⁹³Uganda Police Force, (2009) *Annual Crime Report 2008*,

http://www.upf.go.ug/police_annual_crime_report%202008.pdf, accessed 26 January 2011.

²⁹⁴ UK Serious Fraud Office (2009) "Helping in the Fight Against Corruption in Uganda," *Annual Report 2009*, at <http://www.sfo.gov.uk/about-us/annual-reports--accounts/annual-reports/annual-report-2008-2009/helping-in-the-fight-against-corruption-in-uganda.aspx>; accessed 29 January 2011.

²⁹⁵ See Uganda Police Force (CID) Website, at <http://www.upf.go.ug/cid.php>, accessed 02 February 2011.

autonomous and independent from the control or direction of any person or authority. It further outlines the functions of the DPP as including:

- a. To direct the Police to investigate any information of a criminal nature and to report to him or her expeditiously;
- b. To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than the Court Martial; and
- c. To take over and continue any criminal proceedings instituted by any other person or authority.

According to the 2008 Annual Prosecution Report, a total of 72 corruption-related cases were handled by the DPP. 24 were sanctioned for prosecution, 23 were still being heard by Court, while there were 3 convictions and 4 dismissals. 12 cases were undergoing further inquiries whereas 6 case files were closed due to lack of or weak evidence.²⁹⁶

There have been calls for the DPP to relinquish all responsibility for corruption cases to the IG, in order to avoid duplication of roles. However, this proposal has never been implemented because it is regarded as a fetter on the DPP's discretionary powers over all criminal prosecutions in Uganda.

²⁹⁶ Government of Uganda, Directorate of Public Prosecutions, Annual Prosecution Report 2008, available at <http://www.dpp.go.ug/images/stat3.gif>, accessed 29 January 2011.

Parliamentary Committees

Article 90 of the 1995 Constitution establishes Parliamentary Committees and vests them with power to summon any Minister or other public officer to give evidence before them. They are also given power to compel the attendance of witnesses and the production of documents. The Parliamentary Rules of Procedure clarify that Parliament may have both standing committees and sectional committees. Of the standing committees, The Public Accounts Committee (PAC), the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE), and the Local Government Accounts Committee (LGAC) are the most relevant in the fight against corruption.²⁹⁷

The Public Accounts Committee is assigned the responsibility of examining the audited accounts of government as presented to the Clerk by the Auditor General. The Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) is responsible for examining the reports and accounts of such bodies to ensure that they are conducting their business in accordance with the law. The Auditor General prepares a separate report which is forwarded for the Committee's consideration. Finally, the Local Governments Accounts Committee examines Local Government Accounts following receipt of a report on the same by the Auditor General.

Parliamentary Standing Committees have played a significant role in holding government officers to account for corruption. It is notable that the PAC is presently chaired by a member of the opposition, which has given the PAC a reputation for impartiality in

²⁹⁷ The Committees are provided for under Part XXIV of the Rules of Procedure.

dealing with corruption. Examples of corruption scandals that have been handled by parliamentary committees include the fraudulent privatisation of Uganda Commercial Bank (1998),²⁹⁸ the irregular purchase of land by the National Social Security Fund from a company owned by Security Minister Amama Mbabazi (2008)²⁹⁹, and mismanagement and misappropriation of funds for the Commonwealth Heads of State and Government Meeting (CHOGM) (2007).³⁰⁰

The role of the opposition MPs on PAC can be credited to good governance reforms, without which multi-party politics would probably not be practiced in Uganda today. Between 1986 and 2005, the NRM ruled Uganda under the “no-party Movement system,” which was “individual-merit” based, yet also “broad-based and all-inclusive.” Political Party activity was virtually banned and parties existed in name only. By 1996 it had become increasingly clear that the Movement was really a one-party system, and there was increasing pressure from donors to free up the political space and allow political parties to operate freely. The NRM conceded to multi-partysim in 2005 after various threats by donors to cut aid to Uganda.³⁰¹ I suggest that appointing various Commissions of Inquiry between 1999 and 2006 when the NRM caved into the demands for a multi-party system of governance was one of the strategies the government used to show that it was

²⁹⁸ BBC News (1998) “Corruption Mars Uganda’s privatisation,” Sunday December 20th, 1998, at <http://news.bbc.co.uk/1/hi/world/africa/239072.stm>; accessed 29 January 2011.

²⁹⁹ Njoroge, J. (2008) “Temangalo Scandal Consumes Nation,” *The Independent*, Thursday 25 December 2008.

³⁰⁰ Wanambwa, R. (2010) “The CHOGM Inquiry and the post- 2011 State,” *The Daily Monitor*, 3 April 2010, at <http://allafrica.com/stories/201004050154.html>, accessed 29 January 2011.

³⁰¹ See Makara, S. (2009) *Deepening Democracy Through Multi-partysim: The Bumpy Road to Uganda’s 2011 elections*, available at http://www.iese.ac.mz/lib/publication/proelit/Sabiti_Makara.pdf, accessed 01 February 2011.

democratic in spite of the ban on political party activity. I will return to this issue in Chapters 6 and 7.

Directorate of Ethics and Integrity

The directorate was established in 2002 under the Office of the President as the body responsible for overseeing the government's so-called "Zero Tolerance" anti-corruption policy. It is responsible for "providing political clout and representation of the anti-Corruption agenda in various local and international fora." It also coordinates all government and non-government agencies in the anti-corruption campaign; spearheads the development of anti-corruption policies, laws and integrity standards; and acts as secretariat and one-stop centre for the accountability sector programmes.

The National Anti-Corruption Strategy is a five year planning framework designed to make a significant impact on building the quality of accountability and reducing the levels of corruption in Uganda. The strategy seeks to strengthen a number of core areas that are regarded as crucial in the fight against corruption. These are: adherence to established regulations and legal requirements; political and administrative oversight in the fight against corruption; public attitudes and beliefs towards corruption and effective enforcement of anti-corruption measures. It seeks to encourage public organisations and agencies to adhere to financial and procurement rules and regulations, to change public attitudes such that corruption is no longer accepted or glorified, and to encourage Ministers and other political leaders to publicly demonstrate their commitment to anti-

corruption and to promote the implementation of criminal and administrative sanctions for culprits.

The Judiciary

The Anti-Corruption Court is an administrative division of the High Court of Uganda established in July 2008 by Practice Direction of the Chief Justice of Uganda specifically to address corruption-related cases. The rationale for its establishment was to provide an orderly mechanism for the speedy and efficient disposal of corruption cases. Unlike other divisions of the High Court, the anti-corruption court will also have two Chief Magistrates and Four Grade 1 Magistrates to preside over cases within their jurisdiction. Although the Magistrates would not qualify to be members of the High Court, the Magistrates' Courts Act authorises the Chief Justice to designate magistrates to assist the Anti-corruption Division of the High Court.³⁰²

The Anti-Corruption Court started off with a bang, because its establishment coincided with prosecutions recommended by the Commission of Inquiry into the Global Fund for HIV/AIDS and Malaria. It tried and convicted Fred Kavuma, a former national television producer, who became the first person to be convicted by the ACC over misuse of Global Fund money. He was sentenced to five years in prison for obtaining \$19,000 by false pretences, and was ordered to refund the money. He obtained the money to air HIV/AIDS

³⁰² Sections 6 of the Magistrates' Courts Act, Cap. 16, Laws of Uganda, provides for the assignment of magistrates and magisterial areas by the Chief Justice.

sensitization programs, but instead diverted the money to personal use and submitted forged receipts to the Ministry of Health. Teddy Ssezi Cheeye, formerly Economic Monitoring Director of the intelligence agency External Security Organisation (ESO) and former anti-corruption crusader who set up a company in 2005 to serve as a GF sub-recipient, was sentenced to ten years in prison for embezzling \$56,000 of GF money for which he produced forged documentation as accountability. His company, ironically named the “Uganda Centre for Accountability” (UCA), was awarded a contract to monitor other GF Sub-Recipients and to ensure that their work was conducted in conformity with approved work plans and budgets. However, the court found that UCA performed almost no such monitoring work despite having expended all the grant money within the first month of its receipt. Elizabeth Ngororano and Annaliza Mondon established an NGO “Health Value Added Ltd.” which received US\$15,000. They failed to account for most of the funds and were sentenced in July 2009 to five years in jail with an order to refund the embezzled money.³⁰³

With the Anti-Corruption Court making headlines, the NRM regime has been quick to give itself credit for having “restored the rule of law and the independence of the judiciary”³⁰⁴ However, it is obvious that the current level of judicial independence has also been due to donors’ insistence on judicial independence as a pre-requisite for the rule

³⁰³ *Uganda v. Fred Kavuma Schoof*, High Court Criminal Session Case No. 168 of 2008, *Uganda v. Teddy Ssezi Cheeye*, High Court Criminal Case No. 1254 of 2008, *Uganda v. AnnaLiza Mondon and Another*, High Court Criminal Case No. 300 of 2009.

³⁰⁴ See President’s official website, List of Achievements at <http://www.statehouse.go.ug/achievement.php?category=Achievements>, last accessed 16 October 2009.

of law. Santos sees this phenomenon as the global rule of law/judicial consensus, one of the pillars that supports hegemonic globalisation. The rule of law and an independent judiciary are regarded as quintessential to development, mainly because of their role in ensuring predictability and certainty for investments and securing property rights.³⁰⁵ He further observes that the “1990s witnessed the increasing social and political visibility of the judicial system across the globe, the rising protagonism of the courts and judges in public life and the mass media and the transformation of the once exoteric judicial affairs and proceedings into the frequent topic of conversation among lay citizens.”³⁰⁶

In Uganda, DANIDA is the donor agency that has had the most visible impact and interaction with the Judiciary, through its “Strengthening the Judiciary Project.” From 1995-2005, DANIDA poured over 125 million Danish Kroners into the Judiciary.³⁰⁷ This money went to building and improving the physical infrastructure of the court system and improving the human resource capacity of the judiciary by providing training for judicial officers. More than 128 judges and magistrates from Uganda attended training courses in Denmark during the period 1995-2005. During this training, one of the primary themes was the independence of the courts and the executive.³⁰⁸

³⁰⁵ Santos, B. d. S. (2002). *Toward a New Legal Common Sense: Law, Globalisation and Emancipation*. London, Butterworths, p. 316.

³⁰⁶ *Ibid.*, p. 318

³⁰⁷ See Ministry of Foreign Affairs, Denmark (DANIDA) (2006), *Evaluation of Danish Assistance to Uganda 1987-2005*, Volume 1. <http://www.um.dk/NR/rdonlyres/F197C164-6F33-43D5-AC62-C990BA32F70D/0/200606UgandaVol1.pdf>, accessed 25 January 2011.

³⁰⁸ Ministry of Foreign Affairs, Denmark (DANIDA) (2005) *Annual Report*, Chapter One, <http://www.netpublikationer.dk/um/7410/html/chapter05.htm>, accessed 25 January 2011.

The rise of good governance has therefore led to a change from the days of Idi Amin when judges were openly intimidated and even murdered.³⁰⁹ Judicial independence in Uganda can be deduced from the extent to which the judiciary is willing to reach judgments that do not favour the Executive branch of government, especially in politically sensitive cases. For example, in *Ssemwogerere versus the Attorney General*, the petitioner, who was the Chair of the opposition Democratic Party, challenged the constitutionality of the Referendum Act 1999 that was passed without Parliamentary Quorum. The Constitutional Court declared both the Act and the Referendum held under it null and void, to the chagrin of the regime.³¹⁰ The Referendum concerned the abandonment of the Movement System in favour of Multi-partyism. It was boycotted by political parties but nevertheless the “Yes” vote carried the day in accordance with the NRM’s wishes.

The Judiciary has made other “anti-executive” judgments in politically sensitive matters, including the acquittal of Opposition FDC leader Kizza Besigye on rape and treason charges.³¹¹ The Constitutional Court nullified sections of the Penal Code that criminalised the “publication of false news,” that were being used by the government to harass the

³⁰⁹ Chief Justice Benedicto Kiwanuka was brutally murdered during Amin’s regime. For more about this see Bade, A. (1996) *Benedicto Kiwanuka: the man and his politics*, Kampala: Fountain Publishers. See also Dibie, R. A. (2001) *The politics and policies of Sub-Saharan Africa* University Press of America, p. 166

³¹⁰ *Paul Ssemogere and Zachary Olum versus the Attorney General*, Constitutional Petition No. 3 of 2000. (unreported)

³¹¹ See Judgment of Justice Katutsi, J.B. in *Uganda versus Kizza Besigye*, Criminal case No. 794 of 2005 (unreported).

press and intimidate journalists.³¹² It also nullified sections of the Political Parties and Organisations Act that sought to suppress the activities of Political parties.³¹³ More importantly, in petitions challenging the election of the President in 2001 and 2006, the Supreme Court conceded that the election was heavily rigged and stopped short of nullifying the results, upholding the result of the election by a narrow majority of the bench (3:2, in 2001, and 4:3 in 2006).³¹⁴ One commentator observed that these rulings were the best possible for the incumbent President Museveni, because they simultaneously demonstrated the independence of the judiciary, whilst preserving his re-election.³¹⁵

Thus the Judiciary is regarded as independent due to its willingness to deliver judgments that do not favour the executive. According to Ellet, the Ugandan Judiciary has exhibited assertive behaviour in censuring government behaviour, even though it has always stopped short of indirectly jeopardising or directly attempting to remove the NRM regime from power. She attributes the quality and institutional strength of the Ugandan judiciary to a cultural legacy of being separate and distinct from the executive, enhanced by the fact that judges still maintain a colonial culture of wearing expensive wigs and robes and exhibiting other British mannerisms. Despite the obvious disadvantages of this colonial heritage,

³¹² Judgement of the Supreme Court in *Obbo and Another versus the Attorney General*, Constitutional Appeal No. 2 of 2002 (unreported).

³¹³ *Ssemogerere and Others versus the Attorney General*, Constitutional petition No. 5 of 2003. See also *Rwanyarare and Others versus the Attorney General*, Constitutional Petition No. 7 of 2002 (unreported).

³¹⁴ *Kizza Besigye versus Y. K. Museveni*, Presidential Election Petition No. 1 of 2001; *Kizza Besigye versus the Electoral Commission and Museveni*, Presidential Election Petition No. 1 of 2006. Whether the decision was the correct one based on the facts and the law or due to timidity remains a matter for speculation.

³¹⁵ See Petersen, C.E., (2006) *Uganda: Presidential, Parliamentary and Local Council Elections 2006*, Norwegian Centre for Human Rights, available at <http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/nordem-report/2006/0806.pdf>; last accessed 31 March 2011.

such as being far-removed from the ordinary people, Ellet maintains that it has served the judiciary well in helping it to maintain a distinct professional and solid identity in the midst of Uganda's numerous regime changes. She also credits the well-trained judges, many of whom left the country during the years of instability in the 1970s and 80s, and returned in the 1990s. They have a cosmopolitan global outlook and are not easily cowed by executive power and attempts at interference. Ellet further observes that constant public criticisms of the Judiciary by the Executive has helped the former to win crucial support from Ugandan elites who are not part of the ruling regime, who frequently express their support by writing letters to the editors of leading newspapers.³¹⁶

Accordingly, it may be inferred that the Judiciary in Uganda, (or at the very least, some individual judges), has exercised independence and played a significant role in controlling executive excess. Although derided by the Executive, it is widely respected both locally and internationally. This is an important factor that has influenced the appointment and proceedings of commissions of inquiry into corruption chaired by judges, as I will elaborate in chapter 4.

³¹⁶ Ellet, R. L. (2009), *Emerging Judicial Power in Hybrid African Democracies*, Beloit College Department of Political Science Working paper. Interestingly Justice Sebutinde and Justice Ogoola who between them have chaired nearly all the corruption-related inquiries of the past decade are also "returnees" from overseas. This could be part of the reason why donors have requested for them to chair inquiries.

3.3 The role of non-state actors in anti-corruption in Uganda

3.3.1 *The Media*

As mentioned in the previous chapter, “participation” was one of the pillars of the good governance agenda / discourse. Media liberalisation was also regarded as an important element of democracy and human rights promotion, another key component of the good governance discourse. In addition, the media was perceived to be crucial to the fight against corruption:

A free press can be a vital check on abuses of power, especially in countries that lack other means of restraining politicians and bureaucrats.³¹⁷

To this end, donors have pushed for the liberalisation of the media in countries such as Uganda that were previously characterised by State control of the media. For example, the DFID (now UKAID) 2006 White Paper “Making Governance Work for the Poor” had as one of its main objectives the creation of a £100 million “Governance and Transparency Fund” designed to support free media and civil society in order to enable citizens to hold governments to account for the delivery of services.³¹⁸

The Uganda PRSP 1994/1995 reveals media freedom to be an element of conditionality. Under “Democracy, Human Rights and Political Governance,” the government reiterates

³¹⁷ World Bank (1997) *World Development Report: The State in a Changing World*, http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/1997/06/01/000009265_3980217141148/Rendered/PDF/multi0page.pdf, accessed 29 January 2011.

³¹⁸ UK Department for International Development (DFID), (2006) *Making Governance Work for the Poor - Helping to build states that work for poor people*, White Paper, at <http://webarchive.nationalarchives.gov.uk/20070905124645/http://dfid.gov.uk/pubs/files/whitepaper2006/wp2006section2.pdf>, accessed 29 January 2011, p. 28.

its commitment to forming a political system characterised by, among other things, “free, strong and independent media, including alternative people’s media.”³¹⁹

Since the liberalisation of the airwaves in the 1990s, Uganda's press, radio, television and internet have grown exponentially. Where once there was only one national Radio Station, TV Channel and one or two newspapers, today Uganda boasts of over 100 radio stations, over 10 TV broadcast stations, 3 daily newspapers and 9 weekly or monthly periodicals.³²⁰ Reporters Without Borders ranked Uganda 107th out of 173 countries on the Worldwide Press Freedom Index 2008, 86th out of 175 in 2009, and 96th out of 178 in 2010; which are slightly above the average for Sub-Saharan Africa.³²¹ Freedom House 2009 ranks the country at 112th out of 195 countries and describes the press environment as 'partly free,' and gives it credit for being one of only 3 African Countries with Freedom of Information Laws.³²²

The growth of the print and electronic media has been accompanied by a surge in public debate on governance and corruption-related issues on radio and TV talk shows. Mutabazi observes that the vacuum created by the ban of political party activities led the media to take up the role of opposition and to a great extent it played that role effectively, given the prevailing constraints. It was the main source of political information and allowed

³¹⁹ GoU, MOFPED (1995) Poverty Eradication Action Plan, at <http://www.finance.go.ug/docs/PEAP%202005%20Apr.pdf>, accessed 29 January 2011, p. 117.

³²⁰ Uganda Bureau of Statistics, (2010) Statistical Abstract, available at <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2010StatAbstract.pdf>, last accessed 20/02/11.

³²¹ Reporters Without Borders, *Press Freedom Index*, at http://en.rsf.org/spip.php?page=classement&id_rubrique=33, accessed 02 February 2011.

³²² Freedom House (2009), *Freedom of the Press Annual Report*, at <http://www.freedomhouse.org/uploads/pfs/372.pdf>, accessed 02 February 2010.

Ugandans to get to know “the other side” of the hitherto regarded as benevolent “Movement.”³²³ Similarly, Mwesige observes that the political role of radio has been altered by the introduction of private radio in developing countries such as Uganda. He particularly draws attention to political call-in talk shows, which create an opportunity for ordinary people to challenge the ruling establishment in unprecedented ways in a situation where information previously moved only in a top-down manner.³²⁴

In particular, “Ebimeeza” or open-air public round-table forums broadcast over radio had become lively sites for debate where the government was freely criticised for its incompetence and wrong-doing.³²⁵ There has also been an expansion in access to the internet, with many newspapers and even radio stations available online. Journalists such as Andrew Mwenda,³²⁶ Charles Onyango Obbo,³²⁷ Ssemujju Ibrahim Nganda³²⁸ and several others write weekly columns that are critical of the government. Mwenda and Obbo have been arrested a number of times for the crime of sedition, and were instrumental in freeing up media space when they successfully petitioned the Constitutional and Supreme Courts to overturn oppressive laws that curtailed freedom of speech and of the press.³²⁹

³²³ Mutabazi, S. S. (2009). "Switching roles in pursuit of democracy in Uganda: the performance of civil society and the media in the absence of political opposition." *Les Cahiers D'Afrique de l'Est* 41: 95-115.

³²⁴ Mwesige, P. (2009), "The democratic functions and dysfunctions of political talk radio: the case of Uganda," *Journal of African Media Studies* 1(2):221-245

³²⁵ Mwesige, P. (2009) "Disseminators, Advocates and Watchdogs: A Profile of Ugandan Journalists in the New Millennium," *Journalism* 5(1):69-96

³²⁶ The Independent, www.independent.co.ug

³²⁷ The Daily Monitor, www.monitor.co.ug; The East African (weekly), www.eastafrican.co.ke

³²⁸ The Weekly Observer, www.observer.ug

³²⁹ The crime of sedition was defined under sections 42-44 of the Penal Code as “ saying or publishing statements inciting hatred towards the person of the president.” See *Charles Onyango Obbo and Andrew Mwenda versus the*

Uganda also has a growing community of bloggers and “cyber-dissidents” who are critical of the government on their blogs and contribute to various internet discussion forums.³³⁰

Thus the media in Uganda has been relatively free and has played an important role in exposing corruption, as cases involving senior members of government are frequently reported by the media, and the public expressing their views on corruption through radio and TV talk shows, letters to newspaper editors, on their blogs and on e-newspapers.³³¹

Despite the arrests of journalists, the regime has to a limited extent, been tolerant of discussions about corruption in the Media, even tolerating the naming of specific individuals allegedly involved in corruption. This has enabled the media to be a credible force against corruption in Uganda, and because it is largely private and not government owned it is trusted by the public as an authentic source of news of what goes on in government. The media remains Uganda’s most credible “opposition and it is through this avenue that “public outcry” against corruption is seen and heard. This public outcry then forms the basis for a commission of inquiry, which according to law must be appointed to

Attorney General, Const. Appeal No. 2 of 2002, *Andrew Mwenda and the East African Media Institute versus the Attorney General*, Const. Petition No. 6 of 2006.

³³⁰ See Heacock, R., (2007), “Self-reflection and the search for meaning in the Ugandan blogosphere,” *Global Voices*, at <http://globalvoicesonline.org/2007/05/17/self-reflection-and-the-search-for-meaning-in-the-ugandan-blogosphere/>, accessed 02 February 2011. For some Ugandan “blogs of note” with political commentary, see Jasper Tumwijukye, <http://jaspermt.blogspot.com/>, Uganda Watch <http://ugandawatch.blogspot.com/>, I write what I like <http://kyomuhendoa.wordpress.com/> The Analyst, at <http://www.observer.ug/>, Rosebell Kagumire, “Rosebell’s Blog,” <http://rosebellkagumire.com/about/>, Tumwijukye Mutambuka, “Ugandan Insomniac,” at <http://ugandaninsomniac.wordpress.com/> See also a Facebook group started by Ugandan Citizens for purposes of discussing and campaigning against corruption, *Anti-Corruption Task-Force of Uganda*, <http://www.facebook.com/pages/Anti-Corruption-Taskforce-Uganda-ACT-Uganda/103997792973415>.

³³¹ See Kasoma, F.P. (1995), “The role of the independent media in Africa’s change to democracy,” *Media, Culture and Society* 17:537-555; Mwesige, P. (2004) “Disseminators, Advocates and Watchdogs: A profile of Ugandan Journalists in the New Millenium,” *Journalism* (1): 69-96; Nogara, M. (2009), “The Role of the Media in curbing corruption: the case of Uganda under President Yoweri K. Museveni during the “no-party” system,” UN/DESA Working Paper No. 72, at <http://ssm.com/abstract=1338167>, accessed 20 July 2010.

look into matters “of public concern.”³³² When a Commission of Inquiry is instituted, it is media access and reportage of its proceedings that makes the inquiry a public event and gives it significance. I will discuss in greater detail the significance of the media in the appointment and proceedings of inquiries in Uganda in chapters 4 and 5.

3.3.2 Theatre and Music

Theatre and Music are popular cultural art-forms in Uganda, a fact that has not been lost on Uganda’s donors. Frank notes that international organisations are increasingly turning to theatre as a means of raising development issues and influencing behaviour change.³³³ There is also increasing support and active encouragement of theatrical and music groups who can spread the message of good governance through songs and plays. An example in the International Anti-corruption Theatre Movement (IATM), birthed in Uganda by Ugandan actor and producer, and supported by Action Aid Denmark, an international Danish NGO that is in turn supported by DANIDA. The organisation, consists of eleven smaller groups that stage plays against corruption across the country.³³⁴

Aside from these “development” theatre groups, there are urban-based theatre groups that regularly stage plays in theatre buildings.³³⁵ Although these are mostly for entertainment,

³³² Section 2, Commissions of Inquiry Act, Cap. 166, Vol. XXI, Laws of Uganda.

³³³ Frank, M. (1996) “Theatre in the Service of Health Education: Case Studies from Uganda,” *New Theatre Quarterly*, 12:108-115.

³³⁴ For more on IATM, see Action Aid Denmark website, at <http://www.ms.dk/sw22684.asp>, last accessed 20/01/11.

³³⁵ For a more thorough analysis of such groups, see Breiting, E. (1992) “Popular Urban Theatre in Uganda: between Self-Help and Self-Enrichment,” *New Theatre Quarterly*, 8: 270-290.

they too regularly portray political and development themes in their plays, including corruption. Examples of such groups include The Ebonies, The Bakayimbira dramactors, and Afritalent.

Uganda has many local pop-musicians, whose styles ranges from rap, R & B, to what has been described as “neo-traditional.”³³⁶ Music is recognised as having played a significant role in the dissemination of public health messages relating to HIV/AIDS,³³⁷ and is now being looked at as a way of promoting anti-corruption messages as well. For example, there is an on-going global competition for original songs by young bands (18-35 years) on the theme of anti-corruption organised by Fair Play, which in turn is an initiative of Jeunesses Musicales International (JMI), the World Bank Institute and the Global Youth Anti-Corruption Youth Network.³³⁸ A number of Ugandan Musicians have written songs about corruption, for example, a hip-hop song entitled “Corruption” by Bebe Cool and Sweet Kid, two of Uganda’s leading pop-stars, criticises the regime for its hypocrisy, for claiming to liberate Ugandans but condemning them to live in a “Babylon” of poverty and discrimination.³³⁹ Similarly, “Corruption *ndwade mbi* (corruption is a bad disease)” by Nabweru Parent’s School Choir is a lament about corruption in Uganda and says everything in Uganda is sub-standard, including schools, roads, hospitals, and even includes the example of the helicopters.³⁴⁰

³³⁶ See Kubik, G. (1981) Neo-traditional popular music in East Africa since 1945, *Popular Music* 1:83-104.

³³⁷ See Frank, note 333 above.

³³⁸ See website, at <http://anticorruptionmusic.org/?home>, accessed 20/02/11.

³³⁹ Bebe Cool and Sweet Kid, “Corruption,” <http://www.youtube.com/watch?v=7QfTdFi7ZWE> , last accessed 17 February 2011.

³⁴⁰ Nabweru Parents’ School, “Corruption *ndwade mbi*,” <http://www.youtube.com/watch?v=3T8uOFxIOKI>, last accessed 17 February 2011.

“Akeyo ka yiya,” meaning “the broom sweeps,” an anti-corruption song in one of the local languages, Lusoga, decries corruption in Uganda and decries the regime for its selfishness and greed, calling upon the citizens to stop selling their souls for a few shillings.”³⁴¹

“Nsobedwa,” meaning, “I am flabbergasted” is a Luganda rap about corruption and greed by politicians. It bemoans the culture of impunity, and the fact that honest men suffer while the thieves prosper.³⁴² *“Enguuzi”* meaning “bribery” by traditional music group Abafrika ba Mungu is another example of the portrayal of corruption in popular culture. It is a lament for the nation, decrying the poor state of the hospitals, roads and schools and calls upon the people of Uganda to wake up.³⁴³ *“Nipatiye chai”* Swahilli for “Give me some tea” is by Ugandan Afro-fusion group Tamba and Qwela decries both petty and grand corruption in Uganda.³⁴⁴

It is difficult to evaluate what impact these artistic forms are having on corruption in Uganda; indeed, such an evaluation is beyond the scope of this study. Nevertheless, they reveal that good governance discourse is no longer restricted to boardrooms and offices where donor and government officials meet, but has been adopted and adapted on the streets, the suburbs and the slums. It is a testimony of the agency of the Uganda people

³⁴¹ Jungle the man eater, “Akeyo,” <http://www.youtube.com/watch?v=i2A7CGXxUZ8>, last accessed 17 February 2011.

³⁴² Bavubuka All Stars, “Nsobedwa,” <http://www.youtube.com/watch?v=e8yVbtzcXtM>, last accessed 17 February 2011.

³⁴³ Abafrika ba Mungu, “Enguuzi,” <http://www.youtube.com/watch?v=FhLg2R-ULJo>, last accessed 17 February 2011.

³⁴⁴ Tamba and Qwela, “Chai,” <http://www.youtube.com/watch?v=XOV1iD8RpJo>, last accessed 17 February 2011.

and the ways in which they have taken advantage of the discourse to fight for their emancipation.

3.3.3 *NGOs and Civil Society*

Alongside encouraging media freedom, the good governance discourse espoused the growth of the civil society as one of the means of keeping the state in check. The participation of civil society in the formulation, review and implementation of PRSPs remains a crucial element of the PRSP process as it is the means of proving that it is “nationally owned.”³⁴⁵ Donors have greatly encouraged the growth of civil society by channelling a significant percentage of aid directly through NGOs as opposed to the state. For example, DFID, through the Uganda Civil Society Umbrella Programme, supplied GBP 2,000,000 to civil society organisations in Uganda between 1998 and 2003 with the aim of strengthening their capacity to participate in governance and hold the government to account.³⁴⁶

There are over 3,500 registered NGOs in Uganda. Many are “small, unspecialised and unfocused.”³⁴⁷ The main activity for most of them is advocacy, although a good number

³⁴⁵ See for example, Uganda PEAP/PRSP 2000, at <http://www.imf.org/external/np/prsp/2000/uga/01/#2.4>, accessed 29 January 2011. Also see Uganda’s 2004/5 PEAP, at [http://siteresources.worldbank.org/INTPRS1/Resources/UgandaPEAP\(2005-Apr\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/UgandaPEAP(2005-Apr).pdf), accessed 29 January 2011, where the involvement of civil society in the PEAP process is frequently reiterated, e.g. at p. xv.

³⁴⁶ See Uganda Donor Projects Database, at <http://www.u4.no/projects/project.cfm?id=297>, accessed 29 January 2011.

³⁴⁷ Uganda National NGO Forum, http://www.ngoforum.or.ug/about/uganda_glance.htm, last accessed 23 October 2009.

are also involved in service delivery in education, health, water and sanitation. They are organised under networks at district and national level, for example, the Uganda National NGO Forum which is a nationwide umbrella organisation for the NGO sector, the Development Network of Voluntary Associations (DENIVA), and of relevance to this study, the Anti-Corruption Coalition of Uganda (ACCU). The ACCU is an umbrella group of more than 70 civil society organisations seeking to curb corruption in Uganda in order to contribute to poverty reduction. The ACCU engages in advocacy and research on corruption-related issues. It organises an anti-corruption week every year in December, the purpose of which is to mobilise civil society in the fight against corruption. In 2008, the coalition started the *Name and Shame* book where public servants who are caught in corruption practices and convicted are named and shamed.³⁴⁸ ACCU works closely with Transparency International Uganda (TI) Uganda, which is a member of the coalition that undertakes advocacy work on anti-corruption laws, holds workshops, and arranges campaigns, seminars and events.

Uganda Debt Network (UDN) is an advocacy and lobbying coalition of NGOs, institutions and individuals that actively engage in anti-corruption lobbying activities.³⁴⁹ The UDN was formed in 1996 as a result of civil society concerns with the social economic development of the country due to the unsustainable level of Uganda's debt burden.³⁵⁰

³⁴⁸ Anti-Corruption Coalition of Uganda, <http://www.accu.or.ug/>, accessed 02 February 2011.

³⁴⁹ Uganda Debt Network, <http://www.udn.or.ug/>, accessed 02 February 2011.

³⁵⁰ Despite being the first to qualify for the Highly Indebted Poor Countries Initiative (HIPC) under which international lenders like the IMF, WB and bi-lateral donors cancelled the debts of poor countries, Uganda's foreign debt currently stands at \$ 4 billion or 24% of GDP. See Parliament of Uganda, (2010) Report of the Committee on the National Economy, 2009/10 Financial Year.

The African Parliamentarians Network Against Corruption (APNAC) Uganda was established in 2000 as one of the first country partners in the network. It engages in advocacy and networking within and outside the Parliament on corruption issues and, in particular, in sensitising the public on the AU Convention on Preventing and Combating Corruption (ACPCC).³⁵¹

The “safe” approach to activism and advocacy adopted by many NGOs such as ACCU belies another reality – that most NGOs in Uganda are not necessarily motivated by altruism or a burning desire to cause change, but have become an avenue by which elites who are not employed in the government or the private sector can create jobs for themselves by accessing donor funding. A recent study on the NGO sector in Uganda casts doubt over the viability of a “charitable sector” in Uganda:

...the evidence suggests that grants from external donors do not encourage a local charitable sector. Many local NGOs seem to be created simply to obtain grant funding. This interpretation is reinforced by the numerous Ugandan NGOs that have a shadowy existence when they do not receive an external grant. For instance, of the roughly 1,700 NGOs registered in Kampala at the time of the survey, only a quarter could be located. Grants do not appear to go to NGOs that would raise funds on their own; instead, they go to a few well-educated, well-connected organizations and individuals skilled at writing grant applications. Observing that grant recipients do not raise local resources does not imply that they deliver services poorly. But it calls into question the assumption that underlies the switch away from government services: if local NGOs are not driven by an altruistic

³⁵¹ See website at http://www.apnacafrica.org/home_e.htm, accessed 02 February 2011.

motive, why should they be expected to behave in a less opportunistic manner than civil servants? ³⁵²

This lack of altruism and the corresponding upward accountability of NGOs to donors as opposed to downward accountability to citizens implies that NGOs can only have a limited impact on anti-corruption in Uganda. This has arisen largely because the so-called growth of civil society in Uganda has come about as a top-down development, encouraged by the World Bank and other donors as one of elements of good governance and democracy. NGOs have arisen not necessarily because they have an emancipatory agenda, but as a logical response to the availability of donor funds. They are not grass-roots movements as such, but top-down formations. As Odora says, “it reflects donors’ practice of channelling more resources outside the state, not an increased political importance of civil society.”³⁵³ Needless to say, there are other internal political factors that limit the effectiveness of NGOs. These will be discussed shortly in the section that follows.

On the other hand, Jones’ recent study of rural life in Eastern Uganda points to the fact that civil society in Uganda is indeed alive and active, but not in the places where academics tend to look for it. He observes that the Churches and Burial Societies are the main institutions through which the rural people manage their affairs and address their development and social concerns. He decries the marginalisation by academics of the role

³⁵² Fafchamps, M. and T. Owens (2008) “The Determinants of Funding to African NGOs” *World Bank Economic Review* Vol. 23(2) 295-321 at 296-297.

³⁵³ Odora, A. (2008). "Rising from the Ashes: The Rebirth of Civil Society in an Authoritarian Political Environment, INT ‘.” L J. NOT-FOR-PROFIT L., June: 79, 85.

of the church and customary institutions in development.³⁵⁴ Other scholars have pointed out the significance of religious organisations such as Mothers' Union, Young Women's Christian Association (YWCA) and the Roman Catholic Women's Guild in addressing women's development concerns.³⁵⁵ Hence there is a need for the re-conceptualisation of "civil society" in Uganda.

Although the prospects for genuine grass-roots movements that can challenge corruption and demand accountability in Uganda currently appear dismal, there remains a possibility that "out of the ashes" of the prevailing socio-economic conditions, an authentic civil society may gradually emerge.³⁵⁶ This will be made possible by the increasing political awareness of the population, especially the rural people who are the largest constituency. Increased political awareness will be a long term outcome of increased access to education through the introduction of Universal Primary Education; increased media access through the proliferation of privately-owned radio and TV stations; improved telecommunications and improved transport networks connecting the rural and urban areas. Thus, the impetus for democracy and emancipation engendered by global neo-liberal policy, while top-down, may have planted the seeds for more authentic democratisation. Indeed, both Mwenda³⁵⁷ and Tripp³⁵⁸ note that there are already significant spaces and opportunities within civil

³⁵⁴ Jones, B. (2009), *Beyond the state in rural Uganda*. Edinburgh, Edinburgh University Press.

³⁵⁵ Nakayi, R., M. Twesiime-Kirya, et al. (2005). "The Women's Movement in Africa: Creative Initiatives and Lessons Learned." *East African Journal of Peace and Human Rights* **11**(2):1

³⁵⁶ Odora (2008), op. cit.

³⁵⁷ Mwenda, A. (2010). "Africa is democratising; here is how." *The Independent*. Kampala, Independent Publications Ltd.

³⁵⁸ Tripp, A. M. (2010). *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*. Boulder, Co, Lynne Rienner Publishers.

society, the media, the educated elite, the judiciary and the legislature where a democratic culture is gaining ground. It is these spaces that some judges, journalists, opposition politicians and other activists have taken advantage of to criticise the government and push for accountability and transparency.

The discussion above has shown the steps that the Ugandan government, with the support of its donors, has taken to put in place a comprehensive anti-corruption framework. It has been shown that there are laws and institutions in place that have the potential to curtail corruption in Uganda. There is a fairly independent judiciary, a vibrant media, and a fledgling civil society which have tried to hold the government accountable for its actions within the limited spaces available. The good governance discourse has therefore had a contradictory impact on Uganda that is both boundary-setting and path-breaking; to borrow Santos' phrase. The ways in which the anti-corruption framework has been repressive as opposed to emancipatory calls for a deeper analysis of the various factors at play. Accordingly, the next section discusses why, and how the government subverts anti-corruption efforts.

3.4 Neo-patrimonialism and the “lack of political will” to fight corruption

The establishment of a “near perfect” anti-corruption framework is crucial to the ability of the Uganda State to obtain development aid. The various PRSPs and PRSP Progress Reports over the years reveal that the Uganda government is at constant pains to

demonstrate its commitment to anti-corruption. And yet, despite the progress made, the framework has had a very limited impact on corruption in Uganda. In the previous chapter, the limited impact was attributed to problems within the discourse of good governance itself and its implementation mechanism of conditionality. However, there are also many internal problems in the domestic arena that hinder anti-corruption. These are frequently attributed to the “lack of political will” to fight corruption.

The lack of political will is a complex issue, as a number of scholars have acknowledged. Fritzen calls it the “orthodox paradox,” meaning the impracticability of political leaders spearheading anti-corruption reforms that go against their interests. According to him, the “lack of political will” frequently cited as the reason for the failure of anti-corruption efforts is simplistic, as it fails to acknowledge the impossibility of State elites policing themselves. The ruling elite cannot police themselves when they gain so much from corruption and have so much to lose by fighting it.³⁵⁹ What they gain is the expansion and maintenance of their power base; concomitantly, seriously addressing corruption by punishing culprits poses a threat to that power-base.

The present configuration of politics and government in Uganda is based upon patronage and clientelism, and corruption is the glue that holds the patronage network together. This works in the following ways; firstly, the President, who is at the top of the network, allows

³⁵⁹ Fritzen, S. (2006). "Beyond “Political Will”: How Institutional Context Shapes the Implementation of Anti-Corruption Policies." *Policy & Society* 24(3): 79-96

(by turning a blind eye) his political cronies and potential rivals such as Ministers and heads of other government bodies to enrich themselves by embezzling funds or obtaining kickbacks on government contracts in return for their support. Secondly, public goods and services such as electricity, roads, schools and health centres are awarded to communities in exchange for political support, thereby rendering them clients. Thirdly, citizens sell their votes to politicians in exchange for cash or consumable goods. This type of political arrangement based on patrons and clients has been referred to as neo-patrimonialism.

3.4.1 Neo-patrimonialism defined

The concept of neo-patrimonialism has been identified as central to the lack of political will in fighting corruption.³⁶⁰ In this regard, the failure of anti-corruption is due the fact that it attempts to promote legal-rationality as propounded by Weber in a context that is characterised by neo-patrimonialism, described as a “mixture” of legal rationality and the patrimonial style of government. It is drawn from Weber’s theories on power, domination and authority. Weber averred that there are three types of authority: legal, traditional and charismatic. Patrimonialism falls under the traditional mode of authority and domination. Weber used it to describe a system of rule based on administrative and military personnel, who were responsible only to the ruler.³⁶¹ Weber’s theory has been modified elsewhere

³⁶⁰ Amundsen, I. (2006). Political Corruption and the Role of Donors in Uganda. *CMI Commissioned Report* Chr. Michelsen Institute; Cammack, D. (2007). "The Logic of African Neopatrimonialism: What Role for Donors?" *Development Policy Review* 25(5): 599-614; Fritz, V. and A. R. Menocal (2007). "Developmental states in the new millennium: Concepts and challenges for a new aid agenda." *Development Policy Review* 25(5): 531-552

³⁶¹ Mommsen, W. J. (1989). *The political and social theory of Max Weber : collected essays*. Chicago, University of Chicago Press

by Quimpo, as “a type of rule in which the ruler does not distinguish between personal and public patrimony and treats matters and resources of state as his personal affair.”³⁶²

The term itself originated with Eisenstadt, who derived it from Weber’s term, “Patrimonialism.’ Neopatrimonialism is therefore a modern form of the traditional patrimonial form of rule and is a mixed system. Elements of patrimonial and rational-bureaucratic rule co-exist and are interwoven.³⁶³ Erdmann’s further elucidation of the concept is enlightening:

Under patrimonialism, all power relations between ruler and ruled, political as well as administrative relations, are personal relations; there is no differentiation between the private and the public realm. However, under neo-patrimonialism the distinction between the private and the public, at least formally, exists and is accepted, and public reference can be made to this distinction. Neo-patrimonial rule takes place within the framework of, and with the claim to, legal-rational bureaucracy or ‘modern’ stateness. Formal structures and rules do exist, although in practice the separation of the private and public sphere is not always observed....two role systems or logics exist next to each other, the patrimonial of the personal relations, and the legal-rational of the bureaucracy. These spheres are not isolated from each other... they permeate each other: the patrimonial penetrates the legal-rational system and twists its logic, functions, and output, but does not take exclusive control over the legal-rational logic... informal politics invades formal institutions.³⁶⁴

³⁶² Quimpo, N. G. (2005). "Oligarchic patrimonialism, bossism, electoral clientelism and contested democracy in the Philippines." *Comparative Politics* 37(2): 229-50

³⁶³ Eisenstadt, S. N. (1973), *Traditional Patrimonialism and Modern Neopatrimonialism*, London, Sage Publications.

³⁶⁴ Erdmann, G. (2007). "Neopatrimonialism Reconsidered: Critical Review and Elaboration of an Elusive Concept." *Commonwealth & Comparative Politics* 45(1): 95-119, at 104

In neo-patrimonialist states, politics is highly informal, and some scholars have argued that the state is a mere façade that masks the realities of deeply personalised political relations.³⁶⁵ Neopatrimonialism encompasses both clientelism and patronage. The former refers to the exchange or brokerage of specific services and resources (for example land, jobs) for political support in the form of votes. The latter refers to politically motivated distribution of “favours” not to individuals, but to groups, usually ethnic or sub-ethnic.³⁶⁶ In this manner, it creates a distorted social contract between rulers and ruled, where people delegate power to those who will take care of them.³⁶⁷ This fuels corruption even further, because a moral economy is created in which there is what Chabal and Daloz refer to as asymmetrical reciprocity between leaders and led. Clientelism and corruption are legitimated by the fact that they serve a community purpose as well as individual enrichment.³⁶⁸

Neo-patrimonialism also involves “presidentialism” which means “the systematic concentration of political power in the hand of one individual, who resists delegating all but the most trivial decision-making tasks.”³⁶⁹ The president “is literally above the law, controls in many cases a large proportion of state finance with little accountability, and delegates remarkably little of his authority on important matters... the presidency emerges

³⁶⁵ Bayart, J. F., S. Ellis, et al. (1999), *The Criminalisation of the State in Africa*, Oxford, James Currey. See also Chabal, P. and Daloz (1999), *Africa Works: Disorder as a Political Instrument*, Oxford, James Curry

³⁶⁶ Erdmann (2007) op. cit.

³⁶⁷ Rimmer, D. (2000). "Review Article: Aid and Corruption." *African Affairs* 99: 121-128.

³⁶⁸ Chabal and Daloz (1999), op. cit.

³⁶⁹ Bratton, M. and N. Van de Walle (1997). *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge University Press.

as the dominant arena for decision-making, to the point that regular ministerial structures are relegated to an executant's role.³⁷⁰

However, it should be noted that, scholars such as Pitcher and Moran cautioned against using the term to describe “all of Africa's troubles.”³⁷¹ saying that its current popular usage is a serious misreading of Weber. In particular, they emphasise that Weber's use of the term delineated a legitimate type of authority. It included ideas of reciprocity and voluntary compliance between rulers and ruled, which enabled subjects to check the actions of their rulers; yet analyses of African patrimonialism overlook this important aspect. They also decry the tendency to use the term to describe various regime types ranging from dictatorial to semi-democratic, “which has established and naturalised a supposedly characteristic form of leadership and governance to the continent as a whole... providing a neat and consistent explanation for violence, state collapse, corruption and a host of other ills.”³⁷² Using a case study of Botswana, one of Africa's “success” stories, which they show to be very clearly a neo- patrimonial state, they reveal the shortcomings of using the term to condense Africa's complex development problems. They suggest that each African country should be viewed individually and called what it is – “an authoritarian regime, a dictatorship, or a democracy with adjectives.”³⁷³ Thus, Tripp's

³⁷⁰ van de Walle, N. (2003). "Presidentialism and clientelism in Africa's emerging party systems." *Journal of Modern African Studies* 41(02): 297-321.

³⁷¹ Pitcher, M., M. Moran, et al. (2009). “Rethinking Patrimonialism and Neopatrimonialism in Africa.” *African Studies Review* 52(1), at p.145

³⁷² Ibid, p. 149.

³⁷³ Ibid., p. 150

conceptualisation of the Ugandan State as “hybrid,” or “semi-authoritarian” rather than “neo-patrimonial” would be more desirable.³⁷⁴

Nevertheless, in this study, I will retain the term neo-patrimonialism because it more aptly illustrates the patron and client relationships that are important to my analysis of anti-corruption failure in Uganda, as opposed to viewing them through a democratic/dictatorial lens. In the next section, I elaborate on how neo-patrimonial patron-client relations operate in the Ugandan context.

3.4.2 Neo-patrimonialism in Uganda

In “Personalising power in Uganda,” Mwenda notes that the leader (Museveni) “wears all the hats and pulls all the strings.”³⁷⁵ Journalist Onyango Obbo says that “Museveni must have the Africa record for dealing with the smallest problems personally,” from resolving disputes between technocrats, to land disputes and family disputes.³⁷⁶ The President has allegedly been involved in government procurement, directing to whom tenders should be awarded as happened in the Junk Helicopters saga discussed in Chapter 5. He was also reportedly involved in procurement deals for the Commonwealth Heads of State and Government Meeting (CHOGM) that took place in October 2007 in Uganda. In the Global

³⁷⁴ Tripp, A. M. (2010). *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*. Boulder, Co, Lynne Reinner Publishers.

³⁷⁵ Mwenda, A. (2007). "Personalising Power in Uganda." *Journal of Democracy* 18(3): 23-37

³⁷⁶ Onyango-Obbo, C. (2009), “Why even village quarrels end up on Museveni’s desk,” *The Daily Monitor*. Kampala, Nation Publications Ltd.

Alliance for Vaccine and Immunisation (GAVI) Funds scandal, in which Ministers for Health Jim Muhwezi, Mike Mukula, and Alex Kamugisha were implicated, he directed the IGG to conduct investigations, contrary to the Constitutional guarantee of the IGG's autonomy.³⁷⁷ These are just a few examples of the President's extensive involvement in decision-making in Uganda.

The personalisation of power can be further seen in instances where the President has publicly admitted to protecting senior politicians close to him from legal proceedings/ and or sanctions that loomed over them due to their involvement in corruption. Speaking at the wedding of Francis Otafiire, son of Minister of Water, Lands and Environment Kahinda Otafiire, Museveni is quoted to have said:

I will not run away from old friends. I refused to run away from (Amama) Mbabazi during the Temangalo saga because he is an old friend and that is why I have always defended Otafiire whenever he is attacked by all sorts of people...³⁷⁸

Indeed, many people close to Museveni have been tainted by corruption allegations. In 2008, Ananias Tumukunde, an aide to President Museveni, was jailed at Southwark Crown Court for receiving £80,000 in bribes from a Wiltshire-based firm that was awarded a contract to protect world leaders during the Commonwealth Heads of State and Government Meeting in 2007 in Kampala.³⁷⁹ On December 9, 2009 the British handed a

³⁷⁷ Discussed at 3.5 below.

³⁷⁸ Yassin Mugerwa, (2009) "Stop Defending Corrupt Bush War Comrades," *The New Vision*, <http://allafrica.com/stories/200909070144.html>

³⁷⁹ Lewis, P. & R. Evans, "Ugandan is jailed in UK bribery crackdown," *The Guardian*, 23 September 2008, at <http://www.guardian.co.uk/uk/2008/sep/23/ukcrime.law>, last accessed 23 February 2011.

cheque for the amount to the IGG at a public function in Kampala. And yet, Museveni kept Tumukunde on his staff and never came out to applaud the actions of the British or condemn Tumukunde.³⁸⁰

Thus we see the President out rightly acknowledging corruption in his regime and simultaneously admitting to going out of his way to protect members of the ruling elite.

A portrait of Uganda's ruling elite would show the President at the top or centre, and just below or surrounding him are the remaining members of the so-called "band of 27" who went with him to the bush to launch a guerrilla war in 1980, of which the above-named Otafiire is one. It also includes other people who did not go to the bush, but supported the activities of the NRA/NRM by fundraising, raising awareness and so on, of which Amama Mbazazi is one. Many of these "top" cadres are Ministers or army generals. It is also significant that they are from the same ethnic group. A few members of the band of 27 such as Kizza Besigye and Mugisha Muntu have left the NRM and are now in the Opposition. In addition to this "original" group of "1986" millionaires, so called because they took power as a rag-tag under-nourished army but are now extremely wealthy and pot-bellied individuals, are various others who have been co-opted into the system over the years, most of whom are from the President's family and/or ethnic group.³⁸¹

³⁸⁰ Mubatsi A.H. (2010) "Events that shaped the last decade in Uganda 2000-2010," *The Independent*, Sunday 09 January 2011, at http://www.independent.co.ug/index.php?option=com_content&view=article&id=3808:events-that-shaped-the-last-decade-in-uganda-2001-2010&catid=71:special-report&Itemid=167, last accessed 23 February 2011.

³⁸¹ Suleman, M., (2010) "The Great Curse of the '1986 Revolution' exposed," Uganda Correspondent, at <http://www.ugandacorrespondent.com/articles/2010/12/the-great-curse-of-the-1986-%E2%80%98revolution%E2%80%99-exposed/>, accessed 01 February 2010.

Patronage in countries such as Uganda constitutes a 'rational choice' made by politicians as the best way of maximising and legitimating their power. For example, With 71 members, Uganda has the third largest cabinet in the world, after North Korea and Kenya. A large Cabinet enables the President to buy off potential opponents among the elites by giving them salaried jobs and opportunities for accumulation through corruption. More importantly, it provides a short cut to obtaining the support of the masses, as these co-opted elites form an important bridge between the leadership and the various ethnic constituencies that make up Uganda. As one Ugandan political commentator has observed:

(Ethnic) identity creates a common emotive ground between elites and the masses that obscures the economic and class differences between the two groups. Elites construct their presence in government as a sign that their tribe or religion is represented in the high councils of power. Ordinary people see in the success of their kith and kin an image of their own future... To legitimise their wealth, wealthy elites indulge in exaggerated demonstrations of generosity. They host lavish feasts where the masses are treated to meat and chicken and alcohol; they give charity to poor neighbours whenever they are in difficulty; they pay school fees for a few children in the village; they help some get jobs in the capital city... It is through these acts of generosity that elites legitimise their wealth among their impoverished kith and kin. But their public displays of wealth also offer hope among the tribe that their sons too can grow to attain such feats of wealth and status. Therefore, a strategy of co-opting elites, even when it diminishes the state's capacity to deliver

public goods and services to the masses, remains a more cost-effective strategy of building successful political coalitions to win elections in Africa.³⁸²

Echoing Chabal and Daloz, the same commentator maintains that in this way, corruption *is* accountability. Although corruption is on its face, a selfish act that enriches big men at the expense of the poor, the fact that a significant portion of stolen funds are spent on extending personal generosity to individuals or rural communities buy corruption its legitimacy.³⁸³

In Uganda, political coalition building has evolved into an art form, where patronage extends from the presidency down to the village level, the lowest unit of local government administration. In 1986, the NRM government introduced a novel system of popular participation based on “Resistances Councils,” later re-named Local Councils (LCs), with units ranging from LC1 (village), LCII (parish), LCIII (sub-county), LC IV (County) to LC V(District). The basic unit, the LC I is composed of all adults within a given locality, with a directly elected executive committee. However, beyond the village level, voting is based on electoral colleges made up of committee members, thereby creating a hierarchy that becomes increasingly elitist the higher one goes in structures of the system.

The LC system was hailed both locally and internationally as an innovation that greatly increased the peoples’ participation in their governance; one that enabled the government

³⁸² Mwenda, A. (2011) “Uganda has the third largest cabinet in the world,” *The Independent*, Wednesday 19 January 2011, at <http://www.independent.co.ug/cover-story/3824?task=view>, accessed 29 January 2011.

³⁸³ Mwenda, A. (2010) “When Corruption is Accountability,” *The Independent*, 03 November 2009, at <http://www.independent.co.ug/index.php/component/content/article/2040?format=pdf>, accessed 01 February 2011. For a more scholarly discussion on ethnicity and patronage in Africa generally, see Berman, J. (1998) “Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism,” *African Affairs* 97: 305-341.

to get away with what was essentially a one-party state long after other regimes in Africa had been pressured into adopting multi-party politics.³⁸⁴ However, it was not long before cracks begun to appear, as the Movement showed itself to be increasingly authoritarian and intolerant of dissent and opposition.³⁸⁵ Following mounting donor pressure, in 2005 the Movement system was abandoned in favour of multipartyism, and “the Movement” became a political party – the National Resistance Movement.³⁸⁶

Despite the introduction of party politics, the ruling NRM has maintained a stranglehold over Ugandan politics. This is because the local government structures were fused with the Movement system, as the Local Councillors from Village to District level also served as political mobilisers. This created a formidable political mobilisation apparatus which the opposition parties have not effectively penetrated to-date.³⁸⁷ Secondly, Local Council politics was captured by local elites, as only such people had the political and economic influence to be elected through the electoral colleges.³⁸⁸ With ethnicity as the corner-stone of the patronage system, the re-introduction of multi-party politics has been accompanied by a domino effect, with different tribes and sub-tribes demanding to be located within

³⁸⁴ Carbone, G. (2005). *'Populism' visits Africa: The Case of Yoweri Museveni and No-Party Democracy in Uganda*, Crisis States Programme Development Research Centre, Università degli Studi di Milano, Working Paper No. 73. See also Rubongoya, J. B. (2007), *Regime Hegemony in Museveni's Uganda: Pax Musevenica*. New York, Palgrave Macmillan.

³⁸⁵ Human Rights Watch (1999), *Hostile to Democracy: The Movement System and Political Repression in Uganda*, <http://www.hrw.org/legacy/reports/1999/uganda/>, accessed 01 February 2011.

³⁸⁶ According to the 1995 Constitution, all Ugandans were members of the Movement, and entitled to run for office on individual merit. Political Party Activity was constitutionally banned until 2005, when a the ban was lifted by a referendum as provided for in the Constitution. In 2005, a Constitutional Amendment abolished the Movement System.

³⁸⁷ Carbone (2005) op.cit. See also Ciganikova, M. (2008). "Of Mustard Seeds and Democracy". Assessing the Impact of “Movementocracy.” *Stichproben. Wiener Zeitschrift für kritische Afrikastudien* 15.

³⁸⁸ Golooba-Mutebi F., (2008), "Politics and Local Government in Uganda," in F. Saito (2008) *Foundations for Local Governance: Decentralisation in Comparative Perspective*, Heidelberg, Springer, pp. 137-164.

their own district to avoid marginalisation from larger tribes. There are now 114 districts from 10 at independence and 33 at the time when the NRM took power. The re-emphasising of ethnicity and tribalism at the expense of nationalism is seen as an attempt by the NRM to entrench patronage by fragmenting the opposition, creating jobs for its clients whilst maintaining its hold on power because granting districts to locals who demand for them makes the latter beholden to the government and obliged to ensure that voting in that district is pro-NRM.³⁸⁹ The transformation of Local Councils into instruments of patronage in Uganda lends credence to Chabal and Daloz's claim that African leaders' corrupt behaviour can be rationally explained, that what appears as corruption and disorder are politically instrumentalised and enable the system to work and to perpetuate itself.³⁹⁰

It can therefore be seen that neo-patrimonialism, manifested through patronage politics is one of the most important factors behind the lack of political will to fight corruption and hence the ineffectiveness of laws and policies. It does this in two ways – firstly, the ruling elite are unwilling to enforce anti-corruption because they benefit a great deal from it. Secondly, and perhaps even more crucially, patronage quells demands for accountability from an electorate that has settled for public services to be given as favours and not as rights. All in all, corruption emerges as the glue that holds patronage networks together and therefore as the means by which political power is exercised and maintained.

³⁸⁹ Cammack, D., F. Golooba-Mutebi, et al. (2007). "Neopatrimonial politics, decentralisation and local government: Uganda and Malawi in 2006." *Good Governance, Aid Modalities and Poverty Reduction* Working Paper 2.

³⁹⁰ Chabal and Daloz (1999), op. cit.

3.5 How the Uganda government subverts anti-corruption

Given the important role that corruption plays in the political system, there are various ways by which the government subtly and blatantly subverts anti-corruption. Subtle ways include the under-resourcing and overburdening of anti-corruption agencies, which is further aided by the existence of multiple agencies with overlapping jurisdictions. They also include the use or abuse of discretionary powers to prosecute or not to prosecute (usually blamed on lack of evidence), as well as the discretion not to implement non-binding recommendations made by anti-corruption agencies. Anti-corruption is also subverted by the passing of watered down laws that give with one hand, but contain claw-back clauses that impact negatively on the ability of the law to tackle corruption. On the other hand, blatant ways involve direct interference in the work of anti-corruption agencies that obstructs the process of justice, as well as nepotism and cronyism in the appointment of officials involved in anti-corruption. Moreover, the State can use coercive and non-coercive means to clamp down on the judiciary, media and civil society who demand for accountability.

3.5.1 Under-resourcing and overburdening anti-corruption agencies

In spite of the Constitution proclaiming that “the distribution of powers and functions as well as checks and balances provided for in the Constitution among various organs and institutions of

government shall be supported through the provision of adequate resources for their effective functioning at all levels,”³⁹¹ a common lament of anti-corruption agencies in Uganda is the lack of resources. This might look like as a straightforward issue of lack, yet there is more to it than meets the eye. The lack of financial and human resource capacity can be regarded as a deliberate ploy to hinder anti-corruption, especially when one takes into consideration the amount of money that is invested in sectors such as Defence.³⁹²

For instance, the Inspectorate of Government (IG), Uganda’s main anti-corruption agency, perennially suffers from staffing shortages. Despite the overwhelming amount of work it does, for example, the department concerned with Leadership Code enforcement currently handles over 15,000 Asset Declaration forms a year with minimum staff. Its reports to Parliament usually highlight its inability to retain experienced lawyers, which affects its institutional memory and further slows down its work.³⁹³ During the first half of 2009, (January –June) the IG handled a total of 2,933 complaints. Out of these 1,834 were brought forward from the previous reporting period, while 739 were received or initiated by the Inspectorate of Government within the reporting period. Only a total of 361 complaints were concluded including 73 complaints which were processed and later

³⁹¹ Constitution of Uganda, 1995, National Objectives and Directive Principles of State Policy, VIII.

³⁹² See Doig, A., D. Watt, et al. (2006). "Hands-on or hands-off? Anti-corruption agencies in action, donor expectations, and a good enough reality." *Public Administration and Development* 26(2): 163-172.

³⁹³ See, for example, Jan-June 2009 Inspectorate of Government Report to Parliament, p. 42.

referred to other institutions. These numbers give a picture of the overwhelming amount of work that is left undone or carried forward from reporting period to reporting period.³⁹⁴

Similarly, the DPP still receives over 1000 corruption related files in a given year, particularly embezzlement. However, for example in 2005, only 168 out of these 1000 was sanctioned for prosecution. An impressive 51 of the cases ended in convictions while 7 were acquitted. Nevertheless, the fact that 1,100 cases out of a total of 1,326 were “still at other stages” reveals the magnitude of the corruption problem and DPPs inadequacy to get to the bottom of it all.³⁹⁵

The problem of lack of capacity is keenly felt in the CID, which receives about 30 to 40 corruption-related complaints every month. And yet, there are only about 30 people working in the Fraud Squad. As a result there is an enormous backlog in cases. Moreover, there are only three forensic experts; one ballistic expert and two handwriting experts. These experts have to work with obsolete materials and equipment, as there is no proper laboratory, and only two microscopes to work with.³⁹⁶ This shows the government’s lack of commitment to the investigation of corruption, despite rhetorical statements to the contrary.

³⁹⁴ Ibid., page 7.

³⁹⁵ Personal Interview with State Attorney, July 2009.

³⁹⁶ Zwart, S (2003) *Uganda – The Fight Against Corruption: A case study on the prevalence of corruption in Uganda, specifically in Local Government, Education, Justice, Law & Order, and Procurement, Commissioned by the Royal Netherlands Embassy, Uganda*. At <http://www.u4.no/document/showdoc.cfm?id=94>, accessed 29 January 2011.

There is inadequate police expertise in forensic auditing and investigation of corruption. This causes delays in investigation of crimes, and may eventually lead to prosecution being abandoned or cases dismissed due to insufficient evidence. The lack of human resource capacity is exacerbated by poor remuneration of the government officers with responsibility for managing corruption. Not only does it affect their morale and motivation, it also leaves them open to temptation from the perpetrators who have amassed a lot of wealth and can easily compromise them.

Matters are further worsened, in the case of the Inspectorate of Government, by its extremely wide mandate. Whether this is a deliberate ploy by the government to paralyse its operations and reduce its effectiveness can only be a matter for speculation. In any case, it is clear that the current mandate is far too wide and leads to the Inspectorate being spread thinly over matters that could be ably handled by different institutions. The ombudsman function of ensuring just and fair treatment in administrative decisions is quite different from the anti-corruption function. The enforcement of the Leadership Code Act is also something that could be ably handled by a different department, so that the Inspectorate concentrates on the prevention, detection, investigation and prosecution of corruption. This specialisation on corruption only would also enhance cooperation with the recently established Anti-Corruption Division of the High Court that has been set up specifically to handle only corruption-related cases.

“Too many cooks spoil the broth” is an adage that aptly describes the limitations of anti-corruption in Uganda. There is an overlap between the IGG and the Directorate of Public Prosecutions (DPP) regarding the prosecution of corruption-related offences which can cause foot-dragging and passing-the-buck, as happened with Jim Muhwezi and Mike Mukula’s petition to the Constitutional Court seeking clarification regarding whether it was IGG or the DPP who had power to prosecute them.³⁹⁷ Under section 41, the Anti-Corruption Act grants authority to both the Director of Public Prosecutions and the Inspector General of Government, to order the investigation of suspects’ bank accounts, share accounts and other documents that may be necessary to prove various corruption offences. This provision was highly opposed by the former IGG, Mrs. Faith Mwendha, who argued for the powers under the Act to be granted only to the IGG so that there could be clarity on the issue.³⁹⁸ Nevertheless, her calls were not heeded. This reveals how the government subverts anti-corruption by leaving loopholes that it can wiggle through in order to avoid or delay the enforcement of the law. Similarly, irregularity in procurement is currently handled by both the IGG and the PPDA causing uncertainty on the part of both the government and the public.³⁹⁹

³⁹⁷ *Jim Muhwezi, Mike Mukula, Alex Kamugisha and Alice Kaboyo versus the Attorney General and the Inspectorate of Government*, Constitutional Petition No. 10 of 2008.

³⁹⁸ “Worries over ‘toothless’ new anti-graft law” *The East African*, <http://www.theeastafrican.co.ke/news/-/2558/533030/-/rka63oz/-/index.html>, last accessed 6 November 2009.

³⁹⁹ In 2006, the Deputy Attorney General wrote to the President advising him that the IGG had no jurisdiction over government procurements. This was in response to the IGG’s halting the process of awarding a tender for the supply of thermal power to a Norwegian Company because it was tainted by corrupt dealings. The IGG received a lot of backlash for frustrating the government’s efforts to relieve the country’s chronic electricity shortage. Despite the AG’s opinion, over 70% of all complaints received by the IGG are related to procurement. See “Uganda \$300 Million Electricity Deal Delayed Due to Bidding Concerns” *The Daily Monitor*, 15th April 2006.

Another problem that has hampered anti-corruption agencies is the ability to hire and retain qualified staff, especially in professions such as law and accounting where the private sector offers much more lucrative opportunities. In 2006 Mr. John Muwanga, a former partner in PriceWaterHouse Coopers (PWC) declined re-appointment after his first term expired on grounds that his pay was insufficient. He was earning Uganda shillings 2.9 million (about USD 1,450) gross pay when other senior public servants were earning much higher salaries; for example, the Commissioner General of Uganda Revenue Authority - 28 million, the Executive Director of the National Social Security Fund – 14.5 million and the Executive Director of the Public Procurement and Disposal of Assets Authority - 8 million. He later accepted to remain in office when his salary was increased.⁴⁰⁰ The incident was nevertheless an eye-opener into the government's inability to follow through on its commitment to anti-corruption by adequately remunerating public servants employed to fight corruption.

3.5.2 Exercising discretionary powers in such a way as to subvert anti-corruption

A closer look at the modest achievements of anti-corruption agencies may lead to an inference of the government's deliberate subversion of anti-corruption efforts. This can be seen from the fact that most of the arrests and prosecutions that the IG conducts are of Local Government Staff; for example, in January –June 2009, all the 16 arrests effected by the IG were of Local Government Officials such as teachers, town clerks, development

⁴⁰⁰ Simwogerere Kyazze, "Everyone can do with a big pay increase," *The Daily Nation*, April 16, 2006.

officers and others.⁴⁰¹ In that reporting period, there were 51 on-going prosecutions, and only one of them involved “big fish,” Ministers of Health Jim Muhwezi, Mike Mukula and Alex Kamugisha, who stand accused of misappropriating funds under the Global Alliance for Vaccines (GAVI).

In addition, the DPP sometimes uses his discretionary power to prosecute in a manner that causes speculation about his independence and autonomy. Firstly, he has often been accused of catching only small fish when it comes to corruption, while the big fish are left to swim free. One notable instance is the Junk Helicopters scandal, where inexplicably, the DPP decided not to charge the implicated big fish “Salim Saleh” a General in the army and brother to the President, who reportedly made a Commission of \$800,000 on the deal, with abuse of office or accepting a bribe. Instead, the DPP called him as a prosecution witness in a bribery case against Emma Katto, the business-man who supplied the choppers. Salim Saleh was also implicated and even confessed to involvement in the fraudulent sale / privatisation of Uganda Commercial Bank and Uganda Grain Millers, but has never been arrested or charged with any criminal offence.⁴⁰²

In 2002, the DPP instituted criminal proceedings against William Nganwa and John Lule, who were the respective Executive Director and Secretary of the National Drugs Authority. They were charged with neglect of duty and abuse of office for allowing the

⁴⁰¹ Ibid, page 11.

⁴⁰² Onyango-Obbo, C. (1998). “Vacancy; Only Thieves Need Apply,” *The Monitor*, Kampala, Monitor Publications Ltd.

importation and subsequent release on the market of adulterated malaria drugs manufactured by Ningbo Pharmaceuticals of China, a company that had already been blacklisted by the Authority for failing to comply with good manufacturing practices. There was evidence that the two officials had personally visited China to “inspect” the consignment, despite not being qualified to do so as this was an assignment that should have been undertaken by a Chemist. They then forced the Head of the Quality Control Laboratory to issue a clearance certificate, despite his findings and report that the drugs were not suitable for human consumption. Towards the end of the proceedings, which had dragged on for over 3 years due to constant requests for adjournment by the Prosecution, the DPP discontinued the case on grounds that it had “lost interest” in the matter!⁴⁰³ Such blatant subversion of anti-corruption is made possible by the fact that the exercise of the prosecutorial powers is discretionary, and it is this discretion that simultaneously allows for politically motivated prosecutions and also insulates DPP from accusations of being politically motivated.

There are other instances where the DPP has shown partiality to the regime, appearing not to have acted independently or autonomously. In 2005, the DPP brought trumped up treason and rape charges against prominent opposition politician Kizza Besigye and hired private practitioners to the tune of 2.9 million Uganda shillings (over USD 1 million) to

⁴⁰³ See Special Report by *The Independent Magazine* (2010), at <http://www.independent.co.ug/reports/special-report/2612-new-law-to-safeguard-whistleblowers>, accessed 02 February 2011.

conduct a private prosecution.⁴⁰⁴ Not only was the transaction carried out in total disregard of procurement regulations, it also made a mockery of the office of the Directorate and its capacity to undertake the function of public prosecution. In addition, the DPP has been zealous about charging journalists who are outspoken about the regime's misdeeds with sedition.⁴⁰⁵ Although these cases are not directly concerned with corruption, they illustrate that the DPP is not immune to political pressure in the performance of its duties.

Another instance that reveals how official discretionary powers are abused to facilitate corruption is that public officials have also become adept at circumventing procurement regulations through “management by crisis;” that is, by deliberately delaying the process so as to create a crisis that would justify rushed decision making and “emergency” procurement.⁴⁰⁶ Recent examples of procurements that have been undertaken in utter disregard of the law include the sale of the National Airport at Entebbe to an Arabian Company with ties to Sam Kutesa, Foreign Affairs Minister related to the President through marriage,⁴⁰⁷ the sale of land by Security Minister Amama Mbabazi to the National

⁴⁰⁴ *Uganda vs. Kizza Besigye*, High Court Criminal Case No. 794 of 2005 (unreported). In his ruling, Justice Katutsi described the prosecution case as “crude” and “amateurish.” Former CID Head, Elizabeth Kuteesa, admitted in her testimony to the Court that investigations were instigated upon direction from the President. See Matsiko wa Mucoori, (2010) “When Museveni is Chief Detective Besigye becomes a Criminal,” <http://www.independent.co.ug/index.php/column/guest-column/68-guest-column/2832-when-museveni-is-chief-detective-besigye-becomes-a-criminal-?tmpl=component&print=1&page=>, accessed 01 February 2011.

⁴⁰⁵ See, for example: “Independent Editors charged with sedition” *The Daily Monitor*, 23 September 2009 http://www.monitor.co.ug/artman/publish/news/independent_editors, last accessed 15 October 2009.

⁴⁰⁶ Inspectorate of Government, (2008), 3rd *National Integrity Survey Report*, p. 16. The PPDA Act allows for procurements to be made without going through the formal bidding procedures in “exceptional cases” to achieve efficient and timely procurement. See section 85 of the PPDA Act.

⁴⁰⁷ See Ben Byarabaha, “Entebbe Airport Scandal Deepens” *The Red Pepper*, Monday 27 July 2009

Social Security Fund (2008), and the purchase of vehicles for the Commonwealth Heads of State and Government Meeting.⁴⁰⁸

Non-binding recommendations made by anti-corruption agencies may be ignored under the rubric of discretionary powers. For example, the PAC can only examine but take no further action; it falls to the IGG or the DPP to pick up where PAC left off. Many times action merely stops at the PAC's headline grabbing hearing. In the recent scandal involving the misappropriation of millions of dollars that had been allocated to Uganda's hosting of the Commonwealth Heads of State and Government Meeting (CHOGM) in 2007, this failure by the Government of Uganda to implement the recommendations of the PAC has led to enforcement of aid conditionality and cut-back of donor funding to the 2010 budget.⁴⁰⁹

3.5.3 Passing diluted or weak laws that give with one hand and take away with the other

Tamanaha opines that "today, law is widely viewed as an empty vessel to be filled as desired, and to be manipulated, invoked, and utilised in the furtherance of ends."⁴¹⁰ This attitude is discernible in the Uganda government's approach to anti-corruption law, which

⁴⁰⁸ Parliament of Uganda, (2009) *Report of the Committee on Commissions, Statutory Authorities and State Enterprises on the National Social Security Fund (NSSF) Purchase of Land in Temangalo*, Wakiso District, at http://www.parliament.go.ug/index.php?option=com_docman&task=cat_view&gid=71&Itemid=102, accessed 01 February 2011. See also, Parliament of Uganda, (2010) *Report of the Public Accounts Committee on the Special Audit Report of the Auditor General on the Commonwealth Heads of Government Meeting (CHOGM) 2007*, available at <http://www.fdcuganda.org/PAC%20CHOGM%20AUDIT%20REPORT.pdf>, accessed 01 February 2011.

⁴⁰⁹ Naturinda, Sheila, (2010) "Donors slice Aid citing Chogm Mess," *The Daily Monitor*, August 10, 2010 <http://www.monitor.co.ug/News/National/-/688334/974164/-/x39f2p/-/index.html>, accessed 10 August 2010.

⁴¹⁰ Tamanaha, B. (2006), *Law as a means to an end: threat to the rule of law*, Cambridge University Press, at p. 1.

appears to be enacted to ensure minimum compliance with good governance conditionality. The enactment of legislation that has significant loopholes or claw-back provisions is evidence of the government's lack of commitment to punishing the corrupt. An instance of this can be seen in the Access to Information Act of 2005. One commentator has said that there are more sections in the Act that limit access to information than those that guarantee it!⁴¹¹ For example, the Act prohibits access to Cabinet Meeting Minutes and lays down a catalogue of other instances where access would be denied. These include information relating to privacy of the person; commercial information of a third party; certain confidential information (although this is not clearly defined); information that would prejudice the safety of persons and property; information on law enforcement and legal proceedings, especially when sub-judice; records privileged from production in legal proceedings; information on defence, security and international relations, and information on the operations of public bodies.⁴¹²

The exemptions laid down in this manner are so wide that practically any request for information can be declined by citing one of these provisions. Indeed, a recent request by two journalists to access agreements between the Government of Uganda and International Oil Companies that are drilling for Oil in Western Uganda was refused by the Attorney General and the Minister for Energy. When the applicants appealed to the Magistrate's Court, their appeal was unsuccessful. The Chief Magistrate Deo Ssejjemba ruled that in his opinion, the applicants had failed "to prove to a standard satisfactory in civil

⁴¹¹ Moses Paul Sserwanga's "Uganda Journalist and Advocate" *blog*, at <http://msserwanga.blogspot.com/2007/08/information-act-a-ship-without-radar.html>, accessed 02 February 2011.

⁴¹² Part III, sections 25 -33 of the Access to Information Act, *op. cit.*

proceedings that the public benefit in the disclosure of the details of the agreements far outweighs the harm that such a disclosure would entail in view of the confidentiality clauses.”⁴¹³ A further appeal has been lodged in the High Court and a decision is awaited. In any case, this first “test case” of the Act has shown that freedom to access information in Uganda may be more of a myth than a reality.

Furthermore, the Act does not recognise the right of non-citizens to access information, which may be detrimental to refugees and stateless persons. In addition, by restricting access only to information held by public bodies,⁴¹⁴ the Act fails to take cognisance of the fact that in the current governance set-up, there are many private bodies that carry out public functions. All in all, the Access to Information Act in its present form leaves a lot to be desired.

Another means by which the law is weakened is to neglect or delay to pass the subsidiary legislation required to bring the Act into operation. For example, section 3 of the Leadership Code Act empowers the IG to investigate and inquire into or cause an inquiry to be conducted on its own initiative or on a complaint made by any person, into any alleged breach of the Code by any leader. In particular, section 3(1)(d) empowers the IGG to investigate and report on any conduct that is allegedly high-handed, outrageous, infamous or disgraceful *in accordance with the definition of the words highhanded,*

⁴¹³ *Charles Mwanguhya Mpagi and Angelo Izama versus the Attorney General*, Miscellaneous Cause No. 71 of 2009, Nakawa Chief Magistrate’s Court (unreported). Decision available at http://www.eastafricapress.net/index.php?option=com_content&view=article&id=318:uganda-ignores-law&catid=94:media-law, accessed 02 February 2011.

⁴¹⁴ Section 2, Access to Information Act, 2005.

outrageous, disgraceful and infamous conduct to be provided by the regulations to be made by the Minister. These regulations have never been made by the Minister to this day, thereby rendering the section useless.⁴¹⁵

The 2010 Whistle blowers Act is another law whose enforcement is likely to run into trouble. It allows for anonymous disclosures under section 3(2), but goes ahead to render this useless by providing that a person who makes an anonymous disclosure shall not be entitled to protection under the Act. Moreover, the Act provides for disclosures to be made to among others, the Resident District Commissioners (RDC) who are the President's political representatives at local government level. This is detrimental to anti-corruption because the office of the RDC is by its nature partisan. Matters are not helped by the fact that the Act names a wide range of officers and institutions who are authorised to receive disclosures, including the Inspectorate of Government, the Uganda Human Rights Commission, the National Environment Management Authority, the Directorate of Ethics and Integrity and Parliament; and gives them wide discretionary powers to decide whether or not a disclosure is "actionable."⁴¹⁶ This provides leeway for many disclosures to never see the light of day. Moreover, the protection offered to whistleblowers has been criticised for being inadequate, as it does not include identity change or relocation for

⁴¹⁵ Ibid.

⁴¹⁶ See Sections 4 and 5 of the Whistleblowers Act 2010.

whistleblowers. Another objection is that the 5% reward is not sufficient motivation for potential whistleblowers, and should have been increased to 10 or even 20 -30%.⁴¹⁷

These issues are pertinent given De Maria's warning concerning Whistleblower legislation in countries such as Uganda. He warns of the dangers of exporting Western whistleblower concepts into the developing world, into contexts where corruption is socially constructed, legitimised and accepted. Furthermore, whistleblowing was conceptualised in societies where there exists a rule of law and a strong public service ethic, unlike countries such as Uganda where the rule of law is routinely flouted, and the notions of a "public" domain and a public service ethic are highly contestable. De Maria also notes that whistleblowing was designed for the city, to complement the anonymous spaces of urban and work living where workers can make disclosures on the strangers who are their workmates. He prophesies that in a situation where there are strong work-family connections and close-knit communities, whistleblower protection is doomed to failure because the price to be paid by would-be whistleblowers in terms of social reprisals or even being harmed or killed is far too high.⁴¹⁸

De Maria's fears are not without basis. The Uganda Revenue Authority Act already includes provisions that allow a person who blows the whistle on tax evasion to receive 10% of the tax recovered. Due to the fact that many tax evaders are "connected" to the

⁴¹⁷ Kagaba, C. (2010), "The Whistleblower deserves deeper State protection," *The Daily Monitor*, 7 March 2010, at <http://allafrica.com/stories/201003080810.html>, accessed 31 January 2011.

⁴¹⁸ De Maria, W. (2005), "Whistleblower Protection: Is Africa Ready?" *Public Administration and Development* 25(3) 217:226

regime, this provision has proven hard to enforce and has landed some whistleblowers in trouble. For example, recently, it was reported in the press that a man who blew the whistle on tax evasion by Fotogenix Limited, a local company that imports photographic equipment and materials, was arrested by operatives from the Chieftaincy of Military Intelligence and incarcerated at Jinja Road Police Station.⁴¹⁹ In another instance, Atanasius Kakwemeire, former head of the National Drug Authority Control Laboratory, lost his job after he blew the whistle on his superiors for authorising the importation of drugs from a Chinese company called Ningbo Pharmaceuticals that had been blacklisted for failing to meet Good Manufacturing Practices.⁴²⁰

Thus we see that in Uganda, enacting anti-corruption law is chiefly a means to the end of obtaining aid, rather than a genuine commitment to deal with corruption.

3.5.4 Disregard for the law, selective enforcement of the law and misusing the law to subvert anti-corruption

In addition to the above-mentioned subtle ways by which the government subverts anti-corruption, there have also been some instances of blatantly ignoring the law or selectively enforcing it in order to subvert anti-corruption. For example, commentators on the new anti-corruption law have pointed out that the President would be one of the first culprits if

⁴¹⁹ Kasasira, R., "Fotogenix faces Shs 8 Billion tax Fraud Inquiry," *The Daily Monitor*, 10 August 2009, at <http://allafrica.com/stories/200908101168.html>. Last accessed 11 November 2009.

⁴²⁰ See Allio, Emmy "National Drug Authority Bosses in Row over Laboratory Chief," *The New Vision*, 30 May 2003; "Kakwemeire wins Anti-Corruption Activists Award 2006," *The New Vision*, 17 November 2006; Katende, B.R. (2010) New law to safeguard whistleblowers, *The Independent*, Tuesday 16 March 2010, <http://www.independent.co.ug/index.php/reports/special-report/71-special-report/2612-new-law-to-safeguard-whistleblowers?tmpl=component&print=1&page=,> last accessed 16 November 2010.

he did not have immunity from criminal and civil proceedings because he has employed many of his relatives in “State House” and recently appointed his wife a Minister of State in charge of Karamoja Affairs.⁴²¹ There is also the astonishing case of Major General Salim Saleh, the President’s younger brother, who by his own admission, has been involved in numerous corruption scandals, from the botched privatisation of Uganda Commercial Bank, to the purchase of junk helicopters; and yet has never been charged with a criminal offence.⁴²²

On a number of occasions, the ruling elite have used legal means to thwart anti-corruption proceedings brought against them. For example, in a recent attempt by the IGG to enforce the Anti-Corruption Act and to have Mr Gasasira, the Principal Accountant, Ministry of Health dismissed for “illicit enrichment” and having unexplained wealth well beyond his income have been hampered by a Court action filed by Gasasira’s lawyers, who allege that he has not been given a fair hearing.⁴²³ The irony in this situation is that an attempt at legal-rational behaviour is itself being legally challenged, revealing the contradictions in Uganda’s fight against corruption.

⁴²¹ Mwenda, A., “Family Rule in Uganda,” *The Independent* <http://www.independent.co.ug/index.php/cover-story/cover-story/82-cover-story/690-family-rule-in-uganda->, last accessed 9 November 2009. See also Izama, A., “Jail is a heartbeat away as new law makes hiring a relative a crime,” *The Daily Monitor*, 25 October 2009, <http://allafrica.com/stories/200910260072.html>, last accessed 9 November 2009.

⁴²² See Sebunya, C. (1999) “The Rise and Fall of Salim Saleh,” *New African*, March 1999, at http://findarticles.com/p/articles/mi_qa5391/is_199903/ai_n21436337/, accessed 31 January 2011. See also, “Who is General Salim Saleh?” *The Daily Monitor*, Tuesday February 9, 2010, at <http://www.monitor.co.ug/-/691150/858764/-/item/0/-/990dc7/-/index.html>, accessed 31 January 2011.

⁴²³ Edward Anyoli, “Court Blocks Dismissal of Gasasira,” *The New Vision*, 2nd November 2009; Steven Candia, “Gasasira Interdicted over Massive Wealth” *The New Vision*, 6th November 2009.

Another example of using the law to thwart anti-corruption occurred in 2003, when the presidential advisor on Political Affairs, Maj. Roland Kakooza Mutale failed to declare his assets in accordance with the Code. The IGG wrote to the President recommending his dismissal from office. The President complied and dismissed Mutale, but in retaliation, Maj. Mutale filed a petition in the High Court citing unfair dismissal and abuse of natural justice. In *Kakooza-Mutale versus the Attorney General*⁴²⁴, judge held that the petition would succeed on the ground that Mutale was dismissed without being given a chance to be heard. At about the same time, In *Fox Odoi and James Akampumuza versus The Attorney General*,⁴²⁵ the first petitioner, who was then Presidential Legal Advisor, and his co-petitioner, a prominent lawyer; rallied to Mutale's aid by challenging various sections of the Leadership Code Act 2002 as being inconsistent with the Constitution. In particular, they challenged section 19(1) of the Act, which mandated the IGG to write to an "authorised person" requiring them to effect the dismissal or other disciplinary action of a subordinate who was found to be in breach of the Code. It was further alleged by the petitioners that where persons had their appointment and dismissal provided for in the Constitution, any action taken as a result of recommendation from the IGG would be unconstitutional. Moreover, that where such action was required of the President, it was a fetter on presidential discretion and was therefore unconstitutional. The President swore an affidavit in support of the petition, deponing that "he had no choice" but to sack Kakooza Mutale after the IGG ordered it. These actions by the President and his apparatchik were

⁴²⁴ High Court Civil Case No. 40 of 2003

⁴²⁵ Constitutional Petition No. 8 of 2003. The Odoi petition was filed in response to the dismissal from office of Roland Kakoza Mutale.

indications of the regime's attitude towards the IGG and a revelation of their double standards in the fight against corruption.

The Constitutional Court agreed with the Petitioners and today, all persons whose appointment to or dismissal from public office are provided for in the Constitution as well as all presidential appointees are excluded from the ambit of the Leadership Code Act. Mr. Odoi, the petitioner was later quoted in the Press saying, "The Constitutional Court just affirmed that the President is the most powerful man in the land and cannot take direction from anyone."⁴²⁶

Yet another instance of using the law to subvert anti-corruption was the 2004 petition by Annebrit Aslund, former Commissioner General of Uganda Revenue Authority, to have the report of the Commission of Inquiry into Allegations of Corruption in Uganda Revenue Authority quashed due to apparent disregard of the principles of natural justice by the Chairperson's allegations of incompetence made against her, which she was never given an opportunity to defend herself against. Her petition succeeded, thereby issuing a death blow to the Commission's work and its report.⁴²⁷ Her example was followed in 2008, when Jim Muhwezi and others filed a Constitutional Petition challenging the investigations, findings and recommendations made by the Inspectorate of Government in

⁴²⁶ Izama, A. (2003), "Sailing without Ballast on IGG Ship," *The Daily Monitor*, 27 November 2003.

⁴²⁷ *Annebrit Aslund versus the Attorney General*, High Court Miscellaneous Cause No. 60 of 2004 (unreported).

the GAVI funds report dated April, 2007.⁴²⁸ The petition was however, unsuccessful, and prosecution of the alleged culprits is proceeding.⁴²⁹

3.5.5 Overt Executive interference in the work of anti-corruption agencies

The IG is supposed to be independent, autonomous and not subject to the control or direction of any other authority according to article 223 of the Constitution of Uganda, 1995. Yet there have been a number of instances of overt interference by members of the executive in the work of the IG. In 2008, the Executive was riled when the IG halted the proposed sale of Naguru Housing Estate to a private investor on grounds that procurement regulations had been breached. The government was particularly riled because then IGG, Faith Mwendha, was regarded to be “hindering investment.” Minister of Lands Otafiire was quoted in the press as saying:

She (IGG) was given a powerful office which she is abusing. She is becoming a burden to the Government. Why can't she point out the problem and we correct it instead of saying that she is investigating the project without pointing out the wrong.⁴³⁰

Such statements from a Cabinet Minister are inimical to the purported independence and autonomy of the Inspectorate. Moreover, it has also come to light that the IG has sometimes taken action following the direction of the President. In the Global Alliance for

⁴²⁸ *Jim Muhwezi, Mike Mukula, Alex Kamugisha and Alice Kaboyo versus the Attorney General and the Inspectorate of Government*; Constitutional Petition No. 10 of 2007.

⁴²⁹ Ariko, Charles, “Ministers’ Trial over GAVI Funds to resume, *The New Vision*, 17 May 2010

⁴³⁰ See Independent Team, “Who wants IGG Mwendha out?” *The Independent*, 15 April 2009, at <http://www.independent.co.ug/index.php/cover-story/8...> last accessed 13 October 2009.

Vaccines and Immunisation (GAVI) scandal, the IG instituted a prosecution case against the Ministers responsible for Health, Jim Muhwezi, Mike Mukula and Alex Kamugisha; as well as Presidential aide Alice Kaboyo upon instructions from the President and not on its own initiative. This is one of the grounds on which the prosecution was challenged in the Constitutional Court.

The Executive has also blatantly interfered in the anti-corruption work of Parliament. In 2008, the Committee on Commissions, Statutory Authorities and State Enterprises (COSASE) investigated the allegedly irregular purchase of land by the National Social Security Fund (NSSF), which is estimated to have over 1.3 Trillion Uganda Shillings (USD 65,000,000) worth in workers' deposits. Procurement procedure was not duly followed. The land in question was owned by Arma Limited, a company owned by Uganda's Security Minister, Mr. Amama Mbabazi. It was alleged that the price of 11 billion Uganda shillings (about USD six million) had been inflated and the Director of the Fund admitted to the Committee that he had been pressured to authorise the transaction by the Security Minister, his business partner, Mr. Amos Nzeyi and his supervising Minister of Finance Ezra Suruma. The latter and the Security Minister are both shareholders in Kigezi Bank of Commerce, which at the time was in urgent need of re-capitalisation. Evidence adduced before the Committee revealed that the proceeds of the sale were indeed meant for the re-capitalisation of the bank.

The members of the Committee were divided in their opinion, although the majority report recommended that the Ministers resign or be dismissed for conflict of interest and influence peddling in contravention of the Leadership Code Act of 2002. The Minority recommended that the Ministers be absolved of any wrong doing as the investigation had been tampered with and one of the major witnesses, the Managing Director of NSSF had reportedly told lies to the Committee. At this point, the President, who until that point had made no comment or appeared to be involved in any way, stepped in by calling a meeting of his NRM Party parliamentary caucus.⁴³¹ During the meeting, the President reportedly told the caucus in no uncertain terms that he would back Mbabazi because the integrity and reputation of the whole NRM Party was at stake in the matter. He reportedly asked Mr. Mbabazi to apologise for the debacle, and it would appear that was the end of the matter. Indeed, following this meeting and on the day the report was due to be tabled before Parliament for discussion, the Attorney General, an NRM stalwart, advised the house not to debate the report because in his “learned” opinion, the COSASE had no jurisdiction to interpret or enforce the Leadership Code Act as this was the responsibility of the IGG. That was the final nail in the coffin of the COSASE’s investigation.⁴³²

⁴³¹ Mary Karugaba and Milton Olupot, “NSSF Minority Report Out,” *The New Vision*, 13 Oct 2009 <http://allafrica.com/stories/200810300099.html>, accessed 29 October 2008. The Committee’s report is available on the Parliament of Uganda Website at http://www.parliament.go.ug/index.php?option=com_docman&task=cat_view&gid=71&Itemid=102, accessed 01 February 2011.

⁴³² See Sheila Naturinda, “Amama Mbabazi’s Long Journey to Another Day” *The Daily Monitor*, 9 November 2008

“Temangalogate”⁴³³ as it has now been baptised reveals the ways in which the advent of multi-party democracy has in some ways been inimical to transparency and accountability in Uganda. In this case, the ruling NRM party used its parliamentary majority to stifle accountability procedures. On the other hand, the Temangalo scandal and the Attorney General’s biased advice to the House show how a neo-patrimonial state can twist the law this way and that to maintain its stay in power.

Whereas the NRM government has not overtly interfered with the Judiciary’s handling of anti-corruption cases, it has not hesitated to show the Judiciary who is in charge in other politically sensitive cases. In Ssemogerere’s case where the petitioner challenged the Referendum Act and succeeded, the government reacted very strongly to the judgement. On the weekend following the delivery of the judgment, a furious President Museveni came out on national television to dismiss the ruling. He accused the Constitutional Court of usurping the powers of the people, being corrupt and opposition party sympathisers. He made derogatory comments about judges’ colonial attitude, “with their wigs and so on.”⁴³⁴ The following week, the NRM mobilised its supporters for a big demonstration against the Judiciary. On June 29, 2004, hundreds of Movement Supporters poured into the streets of Kampala and thence to the High Court Grounds to protest the ruling. They chanted anti-Judiciary slogans and appealed to the President to sack the five judges who presided over

⁴³³ Muniini K. Mulera “Letter to a Kampala Friend: Mbabazi doomed by his own hand” The Daily Monitor, 13 October 2008, at http://www.monitor.co.ug/artman/publish/muniini/Mbabazi_doomed_by_his_own_hand_73028.shtml, accessed 22 October 2009.

⁴³⁴ See a discussion of these events on the President’s official website, <http://www.statehouse.go.ug/news.detail.php?newsId=121&category=Issues>, last accessed 16 October 2009

the case. They also presented a petition to the Speaker of Parliament, demanding that punitive action be taken against the judges. The protesters were even treated to a party in the High Court Gardens to thank them for a job well done.⁴³⁵

In 2005, executive interference in the judiciary reached its zenith when the government adopted a militaristic approach to its clashes with the Judiciary. This happened after a Judge released on bail five men accused of treason that were allegedly linked to Opposition Leader Kizza Besigye and his alleged rebel outfit known as the Peoples' Redemption Army (PRA). On that occasion, the government deployed an elite urban military hit squad known as the Black Mamba Squad to surround the High Court and re-arrest the suspects. They were heavily armed and it was said that their order came from the very top. These actions were extensively condemned both at home and abroad for the threat they posed to judicial independence and Ugandan democracy at large. The Judiciary responded by suspending its business, and was supported by the Uganda Law Society who held a demonstration to express their opposition to the High Court siege.⁴³⁶ Other Civil Society organisations expressed their support for the Judiciary. The East African Law Society and the International Commission of Jurists condemned the incident and requested an inquiry; Ugandans in the Diaspora held demonstrations in New York, Washington DC, Boston, Houston, Los Angeles, Texas, London, Toronto and Johannesburg. Diplomatic

⁴³⁵ Mwenda, A. (2007), op. cit.

⁴³⁶ See Kaiza, D., (2005) "Growing Concern as Ugandan Army infiltrates Police Force" *The East African*, 24 November 2005; Xinhua News Agency, "East Africa Law Society to sue Ugandan gov't over court siege" http://english.peopledaily.com.cn/200703/08/eng20070308_355373.html, last accessed 22 October 2009; BBC News "Strike halts Uganda High Court," at <http://news.bbc.co.uk/1/hi/world/africa/4477110.stm>, last accessed 22 October 2009.

representatives in Kampala also condemned the incident and in a very public way, enforced aid conditionality by withdrawing budgetary support for the government for disrespecting the rule of law.⁴³⁷

Today, the relationship between the Executive and the Judiciary remains a rather strained one. More recently, the government has shown that it can use its power to “discipline” judges regarded as unsympathetic to its cause, as revealed in its refusal to second Justice George Kanyeihamba, a vocal critic of the Executive both in his judgements and outside the Courtroom, to an appointment with the African Court of Human Rights on grounds that he might use his position to embarrass the government.⁴³⁸ Justice Sebutinde, who caused the regime much embarrassment through the formidable cross-examination skills she exhibited as Chair of various judicial inquiries into corruption was seconded to the UN Special Court for Sierra Leone at the Hague, putting her safely out of the way.

3.5.6 Nepotism and cronyism in the appointment of anti-corruption officials

The NRM government’s lack of commitment to anti-corruption can also be gleaned from its handling of appointments to anti-corruption offices. For example, the Police Commissioner is directly appointed by the President and is in theory, answerable to the Minister of Internal Affairs; in practice, he answers directly to the President. The present Inspector General is Major General Kale Kaihura, one of the “band of 27” who started the

⁴³⁷ See “Uganda: ICJ alarmed by assault on Civilian Judiciary, press releases issued 13 and 15 December 2005, at [http:// www.icj.org](http://www.icj.org)

⁴³⁸ Charles Mwanguhya, “African Court: Government Blocks Kanyeihamba” *The Daily Monitor*, 3 June 2008.

NRA/M bush-war, from the same ethnic group as the President and known to be his close associate. This situation is exacerbated by a media report which showed that over 40% of new Police Recruits in recent years have been from Western Uganda, the President's home region.⁴³⁹ The unashamed nepotism in Police appointments can be explained by the nature of power and governance in Uganda, with its complex horizontal and vertical ties of patrons and clients. This requires presidential control over the police force as a matter of political survival.

Another disturbing aspect of anti-corruption in Uganda is the Directorate of Ethics and Integrity, as it is directly under the Office of the President. Unlike the IG, there is no legal guarantee for its autonomy and independence. On the contrary, the DEI as the overall coordinator of anti-corruption activities puts anti-corruption firmly under the control of the President. While the President's leadership and "political will" are necessary for the fight against corruption, in the Ugandan situation where the President is the be-all and end-all of political decision-making, the current position of the DEI under the Office of the President is cause for concern. Moreover, the DEI is headed by Mr. Nsaba Buturo, also from Western Uganda and who was himself in the spotlight in 2005 for misappropriating U Shs 20 million (USD 10,000) from a government-owned radio station Mega FM when he was Minister for Information.⁴⁴⁰ Although he refunded the money, his re-appointment

⁴³⁹ Ssemujju Ibrahim Nganda, "Imbalance: Police Recruits 40% from West" *The Weekly Observer*, 09 August 2007. It should also be noted that both the Director of Public Prosecutions, Mr. Richard Buteera, as well as the Director of the Public Procurement and Disposal of Assets Authority Mr Agaba are also from Western Uganda.

⁴⁴⁰ See Olupot, M. (2006) "Buturo ordered to refund Mega FM shs20m," *The New Vision*, Monday 30th October 2006.

as Minister of Ethics and Integrity says a lot about the ruling party's lax attitude towards its members who are accused of corruption.

3.5.7 Undermining anti-corruption by oppressing the media and civil society

Despite a rhetorical commitment to media freedom, the Ugandan state has reacted strongly whenever it has felt that the media has overstepped its bounds. Recently there has been a clamp-down on the media, with public radio talk shows banned and discussion of certain topics on in-house talk shows banned.⁴⁴¹ Oppressive laws that criminalise Sedition have been used to lock up journalists,⁴⁴² while government security agents have also been known to raid media houses, confiscate equipment, shut down radio stations and block access to their websites.⁴⁴³ The government appears to have a love-hate relationship with the media, sometimes giving it free reign with the President actively participating in talk shows, and sometimes clamping down hard. An emerging trend suggests that true to the regime's chief concern of maintaining power, it gets more and more intolerant when elections are due, and relaxes its grip on the media after it has securely bagged the election

⁴⁴¹ See Evelyn M. Kiapi "Uganda: The Media is Not Free," IPS News at <http://www.ipsnews.net/>, last accessed 23 October 2009. Also see Matsiko Mucoori, "Museveni's Love-hate Relationship with the Media," *The Independent*, Tuesday 20 October 2009.

⁴⁴² Section 39 of the Penal Code Act Cap. 120, Vol. 6, Laws of Uganda, provides that *sedition or seditious intention is where a person or a group of people bring into hatred or contempt or excite disaffection against the person of the president, government by word of mouth, prints or publishes such material and circulates it for the consideration of the public.*

⁴⁴³ See Press Release by Committee to Protect Journalists, "Ugandan radio stations shut; debate programs banned," at <http://cpj.org/2009/09/four-ugandan-radio-stations-shut-debate-programs-b.php>, last accessed 22 October 2009. See also Reporters Without Borders Report on Uganda "Net censorship reaches Sub-Saharan Africa," <http://www.rsf.org/Net-censorship-reaches-sub-Saharan.html>, 24 February 2006, last accessed 22 October 2009; and "Police raid newspaper at the end of a week of harassment" 18 November 2005, <http://www.rsf.org/Police-raid-newspaper-at-the-end.html>, last accessed 22 October 2009.

result. With elections due in 2011, nothing is being left to chance as the government shows clearly that it will not tolerate any criticism.⁴⁴⁴ This has led Jjuuko to observe that:

What is liberalised in Uganda is freedom to invest in the media, not freedom of the press. The civic political content has never been liberalised. If you look at the number of stations, you have missed the point.⁴⁴⁵

Similarly, Oloka-Onyango had earlier on observed that there is an invisible line beyond which freedom of expression in Uganda is simply not tolerated.⁴⁴⁶

In the same vein, the commitment to enhance civil society participation in government is empty talk made for the purpose of fulfilling conditionality. In reality “there is no civil society in Uganda,”⁴⁴⁷ as one of the respondents to this study declared. As seen above, most civil society organisations do not have altruistic motives but have come into being to take advantage of the availability of donor funds. Furthermore, grassroots organisations have been thwarted by the “Movement” political system, under which every adult Ugandan was by law, a member of their Village Local Council supposedly with a say in policy-making, law-making and even justice delivery through the Local Council Court. In this way, the grassroots LC Movement system created a situation where civil society

⁴⁴⁴ For example, 4 stations closed in one day in September 2009, one journalist was arrested and tortured, and several others arrested and charged all in the same month as pressure builds up to elections due in 2011. The blocking of access to Radio Katwe was also done in 2006 just before elections were due. See note 442 above.

⁴⁴⁵ Quoted in Chibita, M. (2009) *Uganda Radio as a Political Space and the regulation thereof*, p.16.

⁴⁴⁶ Oloka Onyango, J (1999) “The limits of expression under Museveni,” *Uganda Journalism Review* I (1): 16-20, quoted in Chibita, ibid, at 15. See also Gastiounis, I., (2011) “Uganda’s media gets down, dirty: ‘gutter press’ revels in sex, sensationalism,” *The Washington Times*, 17 January 2011, at <http://www.washingtontimes.com/news/2011/jan/17/ugandas-media-get-down-dirty/>, accessed 02 February 2011, where it is suggested that freedom of “certain” forms of expression is allowed but criticism of the government enjoys far less freedom.

⁴⁴⁷ Personal Interview with ACCU Official 17 July 2009.

became fused with the State, as all grassroots development initiatives were channelled through the LC system. This effectively stifled the development of autonomous civil society movements in Uganda.

Furthermore, the State's attitude towards NGOs can hardly be described as supportive. While the NGO sector has flourished and grown since 1986 when the NRM came into power, of late the government has sought to stifle civil society through the enactment of a harsh and restrictive regulatory law. Civicus, an international watchdog organisation for civil society organisations observes:

...it is our opinion that the legal framework for the registration and operation of NGOs (in Uganda) reflects a deep distrust of their activities and discounts their vital role in socio-political development.⁴⁴⁸

Civicus expresses concern over provisions in the legal framework governing NGOs.⁴⁴⁹

The registration procedure creates “a web of bureaucratic red tape,” which would be difficult for anyone wishing to register an NGO to navigate.⁴⁵⁰ Multiple endorsements from district and national level authorities are required, and the criteria is defined in such a way to leave the State leeway to refuse to register any NGO they deem unfit for registration.⁴⁵¹ NGOs are prohibited from engaging in any act “contrary to national

⁴⁴⁸ See <http://www.civicus.org/csw/csw-reports-a-publications/4/408-ugandaanalysis310708>, last accessed 23 October 2009

⁴⁴⁹ The NGO Registration Act 1989, the NGO Registration (Amendment) Act 2006 and the NGO Regulations of 1990

⁴⁵⁰ Ibid.

⁴⁵¹ Regulation 5

interest” giving the State further leeway to clamp down on their activities.⁴⁵² Moreover, their functioning is hindered by excessive executive interference in their activities.⁴⁵³ Provisions introducing personal liability for office bearers in addition to organisational liability have caused a lot of disquiet in the NGO community.⁴⁵⁴ In addition, the National Board of Nongovernmental Organisations mandated to oversee NGO activity has an excessively bureaucratic composition including representation from the security organs. Notably, the Ministry for Internal Affairs as opposed to the Ministry for Justice and Constitutional Affairs is charged with the overall regulation of the NGO sector.⁴⁵⁵

The legal framework governing NGOs reflects the character of the State in which they operate - one pre-occupied with holding onto power and minimising all forms of dissent that would present a threat to its survival. This explains why most NGOs in Uganda steer clear of controversial political matters and prefer to work on women’s rights, child protection, and environmental protection. NGOs involved in anti-corruption are particularly vulnerable as they are likely to rub the powers that be the wrong way. As such, the ACCU, which is the most visible anti-corruption NGO, appears to have adopted a “safe” reactive approach, making statements regarding particular scandals and individuals as opposed to strategically addressing the systemic nature of corruption and its link to the authoritarian tendencies and neo-patrimonial character of the regime.

⁴⁵² Section 2 of the NGO Amendment Act.

⁴⁵³ Regulations 12 and 15.

⁴⁵⁴ Section 2 of the Amendment Act.

⁴⁵⁵ Section 4, *ibid.*

3.6 Chapter conclusion: Between accountability and impunity – commissions of inquiry as the solution to the dilemma of being a good governor and a powerful patron

The discussion above shown that the Ugandan State has made a rhetorical commitment to good governance and has complied with the minimum requirements that would ensure that it continues to obtain international aid by passing laws and establishing institutions to deal with corruption. It has a fairly comprehensive legal framework that criminalises corruption and prescribes stiff punishments for it. It has established a number of agencies specifically geared towards anti-corruption, and has repeatedly avowed its commitment to anti-corruption in its annual development plans, the PRSPs. In addition, it has allowed the judiciary to be fairly independent, the media to be relatively free, and civil society organisations to grow. Thus, there are significant opportunities and spaces within the political and governance framework where the Ugandan people can demand governmental transparency and accountability.

However, the government has used various covert and overt means to subvert the reforms above and in order to ensure that corruption, which is a crucial element of its power maintenance strategy, continues relatively unabated. The ensuing situation is a paradoxical one that enables the Ugandan state to somewhat successfully straddle both the good governance discourse and neo-patrimonialism and thus ensure its stay in power.

In the chapters that follow, I will show how and why the mechanism of judicial inquiries provide an ideal way of being a “good governor” in a neo-patrimonial setting. I suggest

that the contradictory interests at play necessitate a symbolic form of accountability that is apparently authentic and yet simultaneously fosters impunity. Commissions of inquiry, aptly described by one scholar as “putting public officials on trial without sending them to jail,” and where the government is free to ignore the advice resulting from the inquiry, are one such unique mechanism.⁴⁵⁶

⁴⁵⁶ Salter, L. (1989-1990). "The Two Contradictions in Public Inquiries." *Dalhousie LJ* 12:173- 196, at 174.

Chapter 4

The role of Commissions of Inquiry in Governance: legitimization through truth-finding

4.1 Introduction

This chapter examines the role of commissions of inquiry in governance generally, as a pre-cursor to analysing their role in anti-corruption in Uganda. The chapter begins with an overview of how inquiries have been utilised in various countries of the world. It then describes the unique features of their organisational type, such as their publicness, quasi-judicialness and inquisitorial approach to fact-finding. It suggests that it is these features that have not only made them a popular device with governments all over the world, but particularly amenable for investigating corruption in Uganda. This is because they aptly demonstrate “ ‘good governance’ in action.”

The chapter further explores the complex role of commissions of inquiry as devices of legitimization, that is to say, their role in repairing crises of legitimacy and restoring public confidence in the government after a crisis. It is suggested that the main importance of commissions of inquiry lies in their ability to facilitate a truth-finding process which enables various groups to achieve multiple aims. This is especially pertinent in Uganda, where the state and the citizens have contradictory aims in relation to anti-corruption. The judicial truth-finding process nonetheless provides a single forum where all these parties can achieve their various ends – the ruling regime can show that it is a good governor and

continue to obtain aid whilst shielding the culprits from criminal prosecution, and civil society acting through the media can participate minimally in enforcing accountability.

4.2 Commissions of Inquiry – ubiquitous instruments of governance

Commissions of Inquiry are popular all over the world. Simon says they

...are a ubiquitous and curious form of governance. In some respects we might analogise them to a political stem cell: they can emerge from almost any form of government and develop into a wide variety of actual institutions... they may be constituted by virtually every department of Anglo-American government.⁴⁵⁷

Hence, inquiries can be found in established democracies such as the UK, Canada, Australia and the USA, as well as “emerging” ones such as Uganda. They are also used in countries that do not have a tradition of English Common Law, including Sweden, France and Germany. Even though they preceded legal rational government as we know it today, they have remained a feature of modern government whose primary purpose is investigation and fact-finding. They have been used to inquire into matters ranging from disasters such as air-crashes, to assassinations and corruption scandals. Inquiries have escaped the confines of individual sovereign states and international ones have been appointed by the United Nations, for example, the 1982 Commission of Inquiry into Israeli practices against the Lebanese and Palestinian Peoples,⁴⁵⁸ the 1999 inquiry into

⁴⁵⁷ Simon, J: (2005), “Parrhesiastic Accountability: Investigatory Commissions and Executive Power in an Age of Terror,” *Yale Law Journal* 114:1419-1457 at 1427-1428.

⁴⁵⁸ International Commission of Inquiry into Israeli Crimes Against the Lebanese and Palestinian Peoples (1982), *Eye-witness reports and conclusions of an international inquiry*, London.

East Timor,⁴⁵⁹ the 2004 International Commission of Inquiry for Darfur⁴⁶⁰ and the more recent 2009 inquiry into human rights violations in Guinea.⁴⁶¹

4.2.1 Commissions of inquiry in Britain

Britain, is the mother country of commissions of inquiry. They date back to 1086, when William I appointed the first Royal Commissioners to conduct the Domesday Survey whose main purpose was to ascertain the “the ownership of each estate of land and its value for taxation.”⁴⁶² Thus, royal commissions preceded the establishment of Parliament and modern legislative or bureaucratic procedure. Their growth in subsequent centuries went parallel to the development of the justice and administrative system. However, as the political centre of gravity moved from the Crown to Parliament, royal commissions became less and less popular and were over-taken by Parliamentary Select Committees as a device of inquiry.⁴⁶³

They became popular again during the Victorian era, but on the whole, their popularity rose and waned over the centuries in relation to different executive administrations and constitutional struggles over royal prerogatives vis-à-vis parliamentary supremacy. The

⁴⁵⁹ United Nations Office of the High Commissioner for Human Rights (2000) *Report of the International Commission of Inquiry on East Timor*, at [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.54.726,+S.2000.59.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.54.726,+S.2000.59.En), accessed 02 February 2011.

⁴⁶⁰ Report of the United Nations International Commission of Inquiry on Darfur, (2005), available at http://www.un.org/news/dh/sudan/com_inq_darfur.pdf, last accessed 02 February 2011.

⁴⁶¹ Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea, available at http://www.un.org/ga/search/view_doc.asp?symbol=S%2F2009%2F693&Submit=Search&Lang=E, accessed 02 February 2011.

⁴⁶² Clokie, H. M. and J. W. Robinson (1937). *Royal commissions of inquiry; the significance of investigations in British politics*. Stanford University, Calif.; London, Stanford University Press.

⁴⁶³ Lockwood, T.J. (1967). “A History of Royal Commissions,” *Osgoode Hall Law Journal* 5:172-209.

British government nevertheless utilised them in colonial Africa, first as a strategy for justifying colonialism and later decolonisation. Comaroff dubs this phenomenon of using inquiries to legitimate law and policy as “*lawfare*,” a modification of “warfare.” In his analysis, inquiries were one of the modes of lawfare by which the colonial government sought to pacify and govern the “natives” through a torrent of ethnographic anthropological studies on “native” life. Lawfare had “many theatres, many dramatis personae, many scripts.”⁴⁶⁴ Inquiries were some of the theatres through which the colonial state sought to consolidate its power, particularly during times of crisis and rebellion.⁴⁶⁵

As in many other parts of its colonial empire, the British Protectorate Government in Uganda resorted to inquiries as it continually sought ways of achieving its mission to civilise “natives.” Notable colonial inquiries in Uganda include the 1933 Commission of Inquiry into the administration of justice in East Africa chaired by H.G Bushe, then Legal Adviser to the Secretary of State for the Colonies. Its terms of reference were “to inquire into the administration of the Criminal Law in Kenya, Uganda and the Tanganyika territory in relation to the procedure and practice of (a) the Courts other than Native Courts, and (b) the Police Authorities, and to consider whether in regard to any procedure

⁴⁶⁴ Comaroff, J. L. (2001). "Colonialism, Culture and the Law: A Foreword." *Law & Social Inquiry* 26(2): 305-314.

⁴⁶⁵ See for example, the 1959 Devlin Commission of Inquiry into Nyasaland (Malawi), which was established to inquire into insurrections in that colony and eventually formed one of the bases for the decolonisation of Malawi; discussed in Comaroff, *ibid.* In Zimbabwe, Mungazi analyses how the colonial government appointed inquiries into education, presumably with a view to attuning the system to national development, but ultimately used the reports to enhance its control over not just education, but society as a whole. See Mungazi, D. A. (1989). "A Strategy for Power: Commissions of Inquiry into Education and Government Control in Colonial Zimbabwe." *The International Journal of African Historical Studies* 22(2): 267-285. Another example is the 1953 one-man Commission of Inquiry of Carothers into the Mau-Mau rebellion in Kenya led by a Psychiatrist which sought to portray the Mau-Mau as a neurotic gang of thugs and not a liberation Movement. See McCulloch, J. (1995). *Colonial psychiatry and "the African mind,"* Cambridge, Cambridge University Press.

or practice of such courts of Authorities, any alterations are desirable (a) in the case of natives, and (b) generally.”⁴⁶⁶ This inquiry was established at a time when Britain was pre-occupied with Penal reform at home, and there was agitation over conflict between European and African Justice prevailing at the time. More importantly, there was long standing frustration over the perceived uncertainty of customary law, which at the time was determined through the testimony of chiefs and elders.⁴⁶⁷

Another prominent colonial inquiry was the 1945 Inquiry into the disturbances that occurred in Uganda during Jan 1945. Peebles extensively analyses this inquiry through the eyes of the Uganda Herald, the then newspaper of the day.⁴⁶⁸ The disturbances were characterised by nationwide strikes by “native” Ugandans in government departments, private offices, factories, and even by domestic workers in private households. There was looting and sabotaging of infra-structure. In March 1945, Governor Hall appointed Uganda’s then Chief Justice, Norman H. P. Whitley, to direct a Commission to inquire into the disturbances. Quoting from the Inquiry Report, Peebles recounts that Whitley controlled the investigation entirely, including the ability to determine which Asians, Africans and Europeans he allowed to give testimony and evidence. He examined 80 Europeans, 16 Asians, and 102 Africans, (who were mostly Baganda, even though the strikes had included virtually all the tribes of Uganda). He later submitted a 32- page long

⁴⁶⁶ UK Hansard 20 February 1933, Vol. 274 c1 447

⁴⁶⁷ Vincet, J. (1989). “Contours of Change: Agrarian law in Colonial Uganda,” in J. Starr and J. Fishbourne Collier (eds), *History and power in the study of law: new directions in legal anthropology*, Cornell: Cornell University Press.

⁴⁶⁸ Peebles, J. (2005). *“Unsatisfactory and unreliable” witnesses: Reexamining the January 1945 Uganda Strike through the pages of the Uganda Herald*. Mount HolyOke College, Bachelor of Arts Dissertation, Massachusetts.

report to the Protectorate Government, in which he claimed that he had done “his best to obtain evidence representing the views of all parties and classes.” He admitted that he did not take the testimonies of some parties seriously because of their “unsatisfactory and unreliable” nature. And thus, by only believing evidence that fit into his idea of Uganda’s problems, Whitley presented a partial and inaccurate analysis of the event that led him to conclude that the “origins of the disturbances were political rather than economic.” Such a conclusion was clearly wrong, given the fact that strikers who met with the Kabaka (King of Buganda) before the inquiry had presented their demands as including changes in the Kabaka’s ministry, “increased rates of pay” for workers, and “better prices for crops.”⁴⁶⁹ The Whitley Inquiry is thus a good example of how inquiries served a legitimization purpose during the colonial period, shown here by the difference between how Whitley interpreted the strike and the demands the strikers presented to the Kabaka of Buganda.

Unsurprisingly, corruption was never a subject of colonial inquiries, because of the nature of colonial governance in Africa and its emphasis on “coercion,”⁴⁷⁰ or its alternative, “pacification”.⁴⁷¹ Hence, the 1933 inquiry into the administration of justice may be regarded as one that was geared towards facilitating the coercion of the colonised through “lawfare” as Comaroff aptly puts it,⁴⁷² while the inquiry into the 1945 disturbances was

⁴⁶⁹ Peebles, *ibid.*, quoting from the Uganda Herald.

⁴⁷⁰ Chanock, (1985):4, in Comaroff, 2001:305

⁴⁷¹ Stamp, (1991:810), in Comaroff, *ibid.* This differs from India in the 18th and 19th Century where corruption became a big issue with the 1788 impeachment trial of Warren Hastings, a British Colonial officer accused of involvement in corrupt practices in India. See Alai (2000) “The Legacy of Geographical Morality and Colonialism: A Historical Assessment of the Current Crusade Against Corruption” 33 *Vanderbilt Journal of Transnational Law* 877-904.

⁴⁷² Comaroff, *op. cit.* at p. 306.

one geared towards pacification. Thus we see pacification and lawfare as two sides of the same coin of power consolidation.

Back home in Britain, by the 20th century, the growth of the civil bureaucracy led to departmental committees of inquiry subsuming the role of royal commissions, and at present most investigatory public inquiries take the form of Tribunals of Inquiry provided for under the Inquiries Act 2005, rather than Royal Inquiries which were a prerogative of the crown and not statutory.⁴⁷³ Recent examples of important inquiries include the inquiry into the death of Steven Lawrence,⁴⁷⁴ the Hutton Inquiry into the death of Dr. David Kelly,⁴⁷⁵ and the on-going Iraq Inquiry chaired by Sir John Chilcot.⁴⁷⁶ Thus, inquiries are still an important mechanism for resolving crises in governance in Britain today.

⁴⁷³ Gilligan, G. (2002). "Royal Commissions of Inquiry," *The Australian and New Zealand Journal of Criminology* 35(3): 289-307

⁴⁷⁴ Stephen Lawrence was an 18 year old Black British man who was stabbed to death in London on 22 April 1993 while waiting for a bus. Five suspects were arrested but no convictions were ever made. There was a racist motive to the attack and the inquiry also found that "institutional racism" had played a role in the inadequate investigation which led to the Police not obtaining enough evidence to convict the killers. See *Report of an Inquiry by Sir William Macpherson of Cluny Presented to Parliament by the Home Secretary*, (February 1999).

⁴⁷⁵ Dr. David Kelly was a British UN Weapons Inspector in Iraq. In July 2003, it became known that he had an unauthorised discussion with a BBC journalist, Andrew Gilligan, about the British government's dossier on weapons of mass destruction in Iraq. He was subsequently called to appear on 15 July before the parliamentary foreign affairs select committee, which was investigating the issues Gilligan had reported. Kelly was questioned harshly by the Committee. He was found dead two days later, and verdict of Suicide was recorded by both the Coroner and the inquiry. See: *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G. by Lord Hutton*, (2004), at <http://www.the-hutton-inquiry.org.uk/content/report/index.htm>, accessed 02 February 2011.

⁴⁷⁶ This inquiry's main objective is to determine whether Britain was justified in joining the US to go to war Against Iraq in 2001. See *The Iraq Inquiry*, website, <http://www.iraqinquiry.org.uk/>, last accessed 20/02/11.

4.2.2 Commissions of inquiry in other developed countries such as the US, Canada and Australia

In the United States of America, investigatory commissions were used as early as 1794 after the Whiskey rebellion, when President Washington appointed a special commission to investigate the causes of the rebellion and negotiate appropriate sanctions with the rebel leaders. In the nineteenth century, they were used to respond to catastrophes and worrying social problems resulting from the growing pressures of mass industrialisation.⁴⁷⁷ In the twentieth century, they were popularised at federal level by the Hoover Administration, but they had been used by President Roosevelt before him.⁴⁷⁸ Famous examples of US Inquiries include the President's Commission on the Assassination of President Kennedy (the Warren Commission),⁴⁷⁹ and the more recent 9/11 Commission.⁴⁸⁰

In Australia, Royal Inquiries are “a regular occurrence,” and have taken on a much more prominent position than they do in their country of origin, Britain.⁴⁸¹ Their popularity has been attributed to Australia's history of a colonial state that relied heavily on coercion and military might; hence coercive royal commissions and boards of inquiry with inquisitorial powers but no need for parliamentary approval reflecting the nature of the colonial state. Their powers of coercion make them an extremely powerful mode of inquiry easily

⁴⁷⁷ Simon (2005) op. cit.

⁴⁷⁸ See Flitner, D. Jr., (1986) *The Politics of Presidential Commissions: A Public Policy Perspective*, Transnational Publishers, New York; quoted in Walters, L. (1989), “Commissions and Bioethics,” *Journal of Medicine and Philosophy* 14:363-368.

⁴⁷⁹ See *Report of the President's Commission on the Assassination of President Kennedy*, 1964, available at <http://www.archives.gov/research/jfk/warren-commission-report/letter.html>, accessed 02 February 2011.

⁴⁸⁰ See *Final Report of the National Commission on Terrorist Attacks upon the United States*, (2004) available at <http://www.gpoaccess.gov/911/pdf/fullreport.pdf>, accessed 02 February 2011.

⁴⁸¹ Gilligan, (2002) op. cit, at p. 289

available to Commonwealth and State governments, made even more attractive by the fact that a Minister of government can influence the selection of Commissioners and their terms of reference, and yet at the same time, distance themselves from the operation and after-effects of the commission.⁴⁸²

Royal Commissions are also a popular mode of inquiry in Canada, where statutory provisions for the establishment of Inquiries were first introduced in the Province of Canada in 1846 and “have become a permanent feature of federal and provincial political life.”⁴⁸³ Centa and Mackelm observe that since confederation, the federal government of Canada has established over four hundred Inquiries to examine a wide array of matters of public concern, while provincial governments have also relied on them to examine and report on various matters. They attribute the popularity of Inquiries in Canada to their useful public policy functions, particularly their ability to exercise wide-ranging investigative power to unearth facts concerning matters of public importance.

Inquiries are also a common feature of government in Israel, where they have been used to manage political conflicts and the killings resulting from this conflict. For example, in 1983, after the publishing of a book on the matter, the Israeli government instituted a Commission of Inquiry into the earlier murder of Dr. Haim Arlosoroff in 1933.⁴⁸⁴ After

⁴⁸² Ibid, at p. 292.

⁴⁸³ Centa, R. and P. Mackelm,(2001), “Securing Accountability through Commissions of Inquiry: A role for the Law Commission of Canada,” *Osgoode Hall Law Journal* 39: 117

⁴⁸⁴ Maoz, A. (2000). "Historical Adjudication: Courts of Law, Commissions of Inquiry, and Historical Truth." *Law & History Review*, 18: 559

the assassination of Prime Minister Rabin in 1995 and the massacre in the Tomb of the Patriarchs in Hebron in 1994, the Israeli government set up inquiries to investigate the incidents.⁴⁸⁵

4.2.3 Commissions of Inquiry in post-independence Africa

African governments have also resorted to commissions of inquiry during times of crisis, including the investigation of corruption scandals. In post-colonial Anglophone Africa, inquiries have investigated a range of issues, from disasters, to social unrest, murders and corruption scandals. Much of Uganda's post-independence history has been characterised by conflict, turbulence and social upheaval, particularly the notorious Idi Amin years of 1971 – 1979. This era was characterised by a number of inquiries into “disappearances” of various people, many of which came to nought as the reports were never published.⁴⁸⁶ Out of twenty nine inquiries established over that period, five were set up to investigate incidents of missing persons and human rights violations in general. For example, there was an inquiry into the 1970 disappearance and reappearance after several days of a British High Commission official, Mr. B.A. Lea. The British and Ugandan governments offered differing explanations for the incident, prompting the appointment of an inquiry.

⁴⁸⁵ Shenhav, Y. and N. Gabay (2001). "Managing Political Conflicts: The Sociology of State Commissions of Inquiry in Israel." *Israel Studies* 6(1): 126-156

⁴⁸⁶ See Appendix for a list of post-independence inquiries in Uganda. Despite non-publication, one such report, the 1975 *Report of the Commission of Inquiry into Disappearances in Uganda*, is in the public domain and can be viewed at the United States Institute of Peace Website, Truth Commissions Digital Collection. At http://www.usip.org/files/resources/collections/truth_commissions/Uganda74-Report/Uganda74-Report_sec1.pdf, accessed 08 February 2011.

In 1971, there was a similar inquiry into the disappearance of two American citizens, Mr. Nicholas Stroth, a freelance journalist and Mr. Robert Siedle, a university lecturer. A further inquiry in 1974 aimed at a general inquiry into allegations of missing persons in Uganda following a significant amount of international and local outcry about murders and disappearances allegedly at the hands of state agents.

Along with the conflict and social upheaval that characterised these years, there was degeneration in public administration. Hence, long before corruption and anti-corruption became buzz-words under the international “good governance” agenda, inquiries were being appointed into mismanagement and abuse of office in government departments and state-owned enterprises. This shows that corruption was a problem in post-colonial states long before the IMF, WB and other donors decided to focus on it as the cause of under-development. Writing about East African inquiries during this period, Kiapi observes that “there have been far more commissions to investigate allegations of corruption than to look into other matters in East Africa.”⁴⁸⁷ Examples of corruption-related inquiries in Uganda during this time include the inquiries into “allegations of corruption in all its aspects,” (1971), as well as others into Uganda Transport Corporation (1975), Uganda Airlines (1975 and 1978), Makerere University (1976), Uganda Hotels (1980), Kampala City Council (1983), and “corruption and financial mismanagement in all aspects in government departments and other public bodies” (1986).⁴⁸⁸

⁴⁸⁷ Kiapi, A. (1973) “The role of inquiries in decision-making in East Africa, *International Review of Administrative Sciences*, 39:133.

⁴⁸⁸ See Appendix, Commissions of Inquiry in Uganda 1962 to-date.

What became of these inquiries into corruption? Reports were dutifully compiled and recommendations made by Commissioners, but they sat on shelves gathering dust and a number have since disappeared into thin air, in keeping with the poor record-keeping and archiving that is common in developing countries such as Uganda.⁴⁸⁹ The recommendations made and whether or not they were implemented was never a serious issue on the public agenda, simply because the regime turnover in Uganda during this period was far too high, and the violence, insecurity and instability meant that people's chief concern was survival. Between 1962 when Uganda gained her independence and 1986 when the current president took power following an armed struggle, Uganda had been through five unconstitutional changes in government brought about by armed coups.⁴⁹⁰

Kenya has conducted quite a number of headline-grabbing inquiries, including the 1990 inquiry into the death of Cabinet Minister Robert Ouko, the 2003 Goldenberg Inquiry and the recent 2007/8 Waki Commission of Inquiry into Post-Election Violence.⁴⁹¹ Both

⁴⁸⁹ Piers, C., A. Doig, et al. (2001). "Filing for corruption: transparency, openness and record-keeping." *Crime, Law and Social Change* 36: 409-425.

⁴⁹⁰ See, Kasozi ABK et al, (1994) *The social origins of violence in Uganda, 1964-1985*, McGill-Queen's University Press. See also, Mutibwa, P.M. (1992) *Uganda since independence: a story of unfulfilled hopes*, Trenton NJ: Africa World Press.

⁴⁹¹ See Cohen, D.W. and E.S. Atieno Odhiambo, (2004) *The risks of knowledge: investigations into the death of Hon. Minister John Robert Ouko in Kenya*, 199; Ohio University Press, Ohio. The Ouko inquiry was halted by President Mi before finishing its work, but this book uses newspaper reports to present what the inquiry managed to establish. See also *Report of the Judicial Commission of Inquiry into the Goldenberg Affair*, available at <http://www.tikenya.org/documents/Goldenberg%20Report.pdf>, accessed 08 February 2011; and *Report of the Commission of Inquiry into Post-Election Violence*, at http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf, accessed 08 February 2011.

Tanzania and Kenya have held a number of inquiries into land matters.⁴⁹² On-going democratic transitions in the region have sparked inquiries, as Tanzania too has held a post-election violence inquiry, following a violent demonstration in Zanzibar in 2000.

The discussion above shows that commissions of inquiry are popular with governments all over the world, with different systems of government and different socio-political contexts. This is testimony to their versatility and flexibility. They are particularly important in resolving crises of government arising from accidents or scandals. The next section considers in greater detail the features of inquiries that make them popular instruments of governance, and suggests that it is these features too, that have enabled them to “flourish” as anti-corruption devices in Uganda’s good governance era.

4.3 Features of Commissions of Inquiry

4.3.1 Executive appointment

In their birthplace in England, the appointment of Royal Commissions is nominally by the Crown, but in reality they are appointed by Ministers. Their descendant cousins, tribunals of inquiry are appointed by Ministers under the Inquiries Act 2005.⁴⁹³ In Federal

⁴⁹² Government of the United Republic of Tanzania and the Nordic Africa Institute (1994), *The Report of the Presidential Commission of Inquiry into Land Matters*; Republic of Kenya (2000) *Report of the (Njonjo) Commission of Inquiry into the Land Law System of Kenya*; Republic of Kenya (2004) *Report of the (Ndungu) Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*.

⁴⁹³ Section 1, Inquiries Act, 2005 Chapter 12, at <http://www.legislation.gov.uk/ukpga/2005/12/introduction>, accessed 02 February 2011.

Australia, too, they are appointed by the President under the Inquiries Act.⁴⁹⁴ In Israel, notably, the power of appointment vests with the President of the Supreme Court, and not with the executive branch, although the latter may make a resolution calling for the institution of an inquiry.⁴⁹⁵ In Kenya, the power of appointment is vested solely in the President.⁴⁹⁶ In most other countries, executive appointment is a key feature of Inquiries. In Uganda, appointment may be done by the President or the relevant Minister. Gilligan notes executive appointment allows governments to minimise any political risks by appointing appropriate people and delimiting the terms of reference. Nevertheless, governments also have leeway to distance themselves from the operation and effects of the inquiry if they wish, especially if it should turn up something unexpected and unwanted.⁴⁹⁷ The terms of reference give instructions to the Commission and appear in the warrant or other legal instrument establishing the inquiry.

4.3.2 Ad hoc-ness

Inquiries are appointed temporarily for a specific period of time to investigate a matter delineated in the terms of reference, and make a report with appropriate recommendations. *Ad hoc-ness* is a key feature of Inquiries that distinguishes them from other governmental modes of inquiry such as planning inquiries or inquiries by Parliamentary Standing and

⁴⁹⁴Cap. 139A, available at http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-139A&doctype=INQUIRIES%20ACT%0A&date=latest&method=part&sl=1, accessed 02 February 2011.

⁴⁹⁵Section 4, Commissions of Inquiry Law, 5729- 1968., available at <http://www.jstor.org/stable/20692596>, accessed 02 February 2011.

⁴⁹⁶Commissions of inquiry Act, Cap. 102, Laws of Kenya.

⁴⁹⁷Gilligan (2002), op. cit.

Sessional Committees.⁴⁹⁸ Simon notes that they are highly contingent, frequently arising in the context of catastrophic events. Hence they are an “emergency apparatus, hastily assembled in times of public crisis and charged with completing their investigation within a short period of time.”⁴⁹⁹ It has been further argued that ad hoc-ness and temporariness are a feature of inquiries which makes them uniquely capable of analysing problems. The fact that it is not a long term commitment with career prospects or long-term obligations enhances the members’ ability to be independent, objective and impartial.⁵⁰⁰

4.3.3 Membership

The factors that influence the membership of an inquiry include expertise, the need to represent various interested stakeholders, and political considerations. Ideal typologies of Commission membership proposed by scholars suggest that a commission should include an expert, layperson, party representative, official and interested party; or expert, representative of an interest, fuse box, advocate of a particular philosophy, consensus builder or genial host.⁵⁰¹

Gilligan observes that “the selection of a Commissioner is important to governments, as it be a limiting procedure, a possible damage control device and a legitimation strategy to appease or re-assure an angry or confused electorate.” He notes that there has been a

⁴⁹⁸ Prasser, (2003) op. cit.

⁴⁹⁹ Platt, A., (1971), *The Politics of Riot Commissions 1971-1970: An Overview*; Quoted in Simon, (2005), op. cit

⁵⁰⁰ Simon, *ibid.*

⁵⁰¹ Wheare, K.C. (1955) *Government by Committee*, Oxford: Clarendon in M. Bulmer, (1983) “An Anglo-American Comparison: Does Social Science Contribute Effectively to the Work of Governmental Commissions?” *American Behavioral Scientist* 26(5):643-668. See also, Donnison, D. (1980), “Committees and committeemen,” in M. Bulmer, (1980), *Social Research and Royal Commissions*, London: Allen & Unwin, pp. 9-17.

tendency for judges and lawyers to be chosen to sit on Inquiries due to the acknowledged ability of legal practitioners to “get to the bottom of things” and an assumption that they bring impartiality and independence to the inquiry.⁵⁰² Inquiries that do not involve lawyers and judges tend to be discredited, as is happening with the on-going Chilcot Inquiry on Iraq, where a number of commentators have decried the Commissioners’ lack of cross-examination skills as well as their inability to decide on the legality of government actions.⁵⁰³ Some commentators are of the view that the Labour government deliberately chose non-lawyers as a way of ensuring a favourable outcome to the government.

Thus cross-examination and the ability to weigh evidence are regarded as key elements in the inquiry process, and excluding lawyers from membership may lead to accusations of the inquiry being a political whitewash and a waste of time. In Uganda, there has been a marked preference for judges as chairs of judicial inquiries into corruption because they are regarded as independent and as having the moral authority to discipline the corrupt executive branch of government.⁵⁰⁴ Also, Lady Justice Sebutinde was chosen to chair three notable inquiries into corruption because of her formidable cross-examination tactics.⁵⁰⁵

⁵⁰² Gilligan, (2002) op. cit., at p. 295

⁵⁰³ *The Guardian*, 23.11.2009, <http://www.guardian.co.uk/uk/2009/nov/23/chilcot-inquiry-iraq-war>

⁵⁰⁴ Interview with State Attorney, Solicitor General’s Chambers, Ministry of Justice, Kampala, Uganda, 8 July 2009.

⁵⁰⁵ See Muyita, S. (2005). “Sebutinde takes tough look to Sierra Leone.” *The Monitor*. Kampala.

Indeed, the decision to establish a Commission, select Commissioners, define the terms of reference, then select and direct those involved in an inquiry are inherently political. Yet such decisions are also bureaucratic, as Gilligan further reiterates. “They are not merely the decisions of a minister, but also reflect the opinion of a permanent civil bureaucracy. Generally, civil bureaucrats provide government ministers with advice and draft the actual terms of reference... they provide the secretary, often a short list of appropriate potential commissioners from a pool of available notables known in bureaucratic circles as “The Book of the Great and Good.””⁵⁰⁶

4.3.4 Independence

Independence from the Executive and Parliamentary branches is a key feature of inquiries in many countries, including Uganda. Hence there is a tendency for many inquiries to be quasi-judicial in nature, due to the belief that this will give the impartiality it needs, in addition to the necessary legal/judicial expertise in investigation and fact-finding.⁵⁰⁷

Simon observes that despite the existence of legislative inquiries and investigations, independent investigatory commissions have remained relevant and popular due to the perceived need to reach beyond the traditional branches of government and counterbalance the increasing depth and breadth of executive administrative power.⁵⁰⁸

Prasser’s study of Public Inquiries in Australia notes that their importance lies in the fact

⁵⁰⁶ Gilligan (2002) op. cit, at p. 295

⁵⁰⁷ Segal, Z, (1984) “The power to probe into matters of vital public importance,” *Tulane Law Review* 58: 941-973.

⁵⁰⁸ Simon (2005), op. cit.

that they are independent, unlike similar government bodies such as Parliamentary Committees, Departmental or Ministerial Committees, task forces and project teams.⁵⁰⁹

Inquiries are external yet internal to the government. Although they are independent to pursue their own procedure in fulfilling their terms of reference, they are appointed by, funded by and report to the government of the day. Thus, as Scraton observes the decision to commission an inquiry, its status and terms of reference, are political. There is no public debate on the terms of reference, or on who is appointed to be a member. Once appointed, Commissioners exercise broad discretion in gathering evidence and information, the conduct and progress of the inquiry, the selection of witnesses and disclosure of documents, the significance attached to evidence and its influence on findings and recommendations.⁵¹⁰ It follows that this internal-external character presents both a threat and an opportunity for taking a fresh look at problems and making appropriate, workable recommendations.

Sometimes the independence of an inquiry may be called into question when links between the membership and the establishment are revealed. For example, links between members of the Chilcot Iraq Inquiry and the Labour government have proved to be

⁵⁰⁹ Prasser (2003), op. cit.

⁵¹⁰ Scraton, P. (2004) "From Deceit to Disclosure: The Politics of Official Inquiries in the United Kingdom" in G. Gilligan & J. Pratt (eds) *Crime, Truth and Justice: official inquiry, discourse, knowledge*, Devon: Willan Publishing, at p. 63.

discrediting factors to its yet unknown outcome.⁵¹¹ Such links create suspicion of a pre-determined outcome. One of the witnesses who appeared before the Uganda Global Fund Inquiry felt that he had not been afforded a fair hearing because the Chair, Justice Ogoola, was a former employee of the IMF and regarded as part of the donor group that had demanded an inquiry.⁵¹² Thus independence is crucial in order for the public to trust the outcome of the inquiry as genuine.

On the other hand, in newly democratised “governance” states such as Uganda, the independence of an inquiry is a crucial way in which the regime can show that it is towing the line of good governance by respecting judicial independence and the rule of law. Hence independence is one of the factors that enables inquiries to be used as instruments to show off good governance in Uganda. In an interview with Justice Sebutinde, she confirmed that to its credit the State had never made an attempt to influence the conduct of any of the inquiries she chaired. There was however, an incident during the URA Inquiry in 2003 where gunmen attacked her residence. The Police has never established who was behind it or why they did it. Even though there was speculation in the media that the State was behind it and were trying to derail her investigation of tax evasion in URA, Sebutinde

⁵¹¹ See “Anger over secret Iraq Inquiry,” at http://news.bbc.co.uk/1/hi/uk_politics/8102203.stm, accessed 16 February 2010. See also Iraq Inquiry Blog 2010, <http://www.theiraquinquiry.net/2010/01/think-it-wont-be-whitewash-think-again.html>

⁵¹² Personal Interview with former witness to the Global Fund Inquiry, July 2009. Justice Ogoola worked for the IMF for 23 years. See Justice James Ogoola’s profile, at <http://www.newvision.co.ug/D/8/12/467195>, accessed 08 February 2011.

denies this and is adamant that the State was very supportive, beefed up her security and reassured her of its full support of her work.⁵¹³

4.3.5 Public hearings

Public hearings are generally the norm for inquiries in most countries. A public process is essential if the inquiry is to fulfil its purpose of restoring public confidence.⁵¹⁴ When the British Government first decided to appoint a public inquiry into the Iraq war, there was a proposal that the proceedings would not be open to the public. However, this was quickly shelved when the proposal proved to be very unpopular with the public.⁵¹⁵ The “publicness” of inquiries is crucial, and according to Prasser’s thesis, it is the key factor that explains their popularity and constant re-appointment by the Australian government.⁵¹⁶ Other proponents of inquiries aver that this “publicness” supports key features of democratic practice, by promoting deliberation and debate.⁵¹⁷ This is very important in the newly democratised such as Uganda, where public hearings and the public scrutiny of official wrongdoing is a novel and exciting feature hitherto unheard and unseen through decades of authoritarian rule. Thus it is not surprising that all the inquiries into corruption during the late 1990s and early 2000s were open to the public and indeed highly

⁵¹³ Personal Interview, June 2010. For more on the attack see Izama, A. (2003), “Strange Bullets in Sebutinde Shootings,” *The Monitor*, 13 October 2003, at <http://www.mail-archive.com/ugandanet@kym.net/msg07963.html>, accessed 03 February 2011.

⁵¹⁴ McLean, M. (2001). ‘How does an Inquiry Inquire? A Brief Note on the Working Methods of the Bristol Royal Infirmary Inquiry’, *Journal of Law and Society*, 28(4): 590–601.

⁵¹⁵ BBC News (2009) “Anger over secret Iraq inquiry,” available at http://news.bbc.co.uk/1/hi/uk_politics/8102203.stm, last accessed 08 February 2011.

⁵¹⁶ Prasser (2003), op. cit.

⁵¹⁷ Frankel, O. (2006). *States of inquiry : social investigations and print culture in nineteenth-century Britain and the United States*. Baltimore: Johns Hopkins University Press

publicised – it was a demonstration of the democratic era into which Uganda had been ushered by the NRM government.

The role of the media in enhancing the publicness, and hence the theatrical and ritualistic aspects of inquiry proceedings is also important. First, the media plays a role in the time leading up to the inquiry, as it is the frenzy of media attention that creates a scandal or a “matter of public importance” warranting the appointment of an inquiry. Once the inquiry is in place, the radio and TV broadcasting of proceedings or their verbatim reproduction in newspapers transforms the inquiry in time and space from a specific location to an item of mass consumption. Brummet argues that the mediation of proceedings through the Mass Media signifies an ideological force. “The Mass Media have now assumed the role of the Church, in a more secular age, of interpreting and making sense of the world to the mass public.”⁵¹⁸ As one commentator on an opinion article about the Chilcot Iraq Inquiry put it: “Of course it’s (the inquiry) a waste of time. Because the accepted version of the truth will be determined, as it always is – by the media – not by the inquiry... the media have the power to change public opinion drastically without ever changing the facts... Tony Blair was re-elected 2 years after the Iraq war, long after it was shown to be a disaster... The only thing which has changed since that election is that the media have decided to bring Blair and the Labour party down....”⁵¹⁹.

⁵¹⁸ Brummett, B. (1993), “Mediating the Laws: Popular Trials and the Mass Media,” in R. Hariman (ed.), *Popular Trials: Rhetoric, Mass Media and the Law*, Tuscaloosa: University of Alabama Press, pp. 179-193.

⁵¹⁹ Comment made by “OneManIsAnIsland on article by Deborah Orr, “The Chilcot Inquiry is a waste of time” The Guardian, 04/02/2010, at <http://www.guardian.co.uk/commentisfree/2010/feb/04/chilcot-inquiry-tony-blair?showallcomments=true#start-of-comments>

The influence of the media and its agenda-setting role has been discussed and analysed by many scholars. It has been described as “primordial” because of the fact that it is seemingly unrestrained and uncontainable.⁵²⁰ McCombs observes that there are many issues that compete for public attention, but the media determines public perception on what are the most important issues of the day.⁵²¹ The media plays a significant role in the time preceding an inquiry, and once an inquiry is instituted, media interest and portrayal determines public perceptions regarding both the proceedings and the outcome of the inquiry. Media commentary shapes public opinion and in many ways constitutes *the* court of public opinion through which public officials perceived as responsible for the wrongdoing are tried, convicted and punished, not by jail, but by loss of reputation. It is through the media that discourses on the subject matter of the inquiry are generated and transmitted.

In Uganda, the media has had a tremendous impact on inquiries into corruption through daily reportage, analysis and debate. The media has made corruption and anti-corruption key items on the national agenda, turned the members of inquiries into celebrities and public officials implicated in wrongdoing into pariahs. This is an issue that will be explored in greater detail in chapters 5 and 6.

⁵²⁰ White, T. H. (1964). *The making of the President, 1960*. New York, Atheneum Publishers.

⁵²¹ McCombs, M. E. (2004). *Setting the agenda : the mass media and public opinion*. Cambridge: Polity Press

4.3.6 Inquisitorial proceedings

Most inquiries adopt an inquisitorial mode to fact finding. The term denotes the need for the tribunal to “inquire” or to find the truth. There is less of a focus on winning or losing, or a simple verdict of “guilty” or “not guilty.”⁵²² Inquisitorial proceedings are a common feature in countries with civil legal systems as opposed to case / common law systems, where proceedings are adversarial in nature. Inquisitorial proceedings are characterised by the active participation of the judge in determining the facts of the case – questioning witnesses, interrogating suspects, ordering searches and further investigations. In contrast, in adversarial proceedings, the judge is a disinterested impartial referee between two parties.

Keeton maintains that inquisitorial procedure is unavoidable if the principal function of the body is fact-finding. He says that this inquisitorial style is advantageous where one or more of the witnesses is quasi-accused, as it lends “weight” to the inquiry. However, the down-side is that where a witness is innocent of wrong-doing, inquisitorial style proceedings where fact-finding and attribution of fault goes hand in hand can be regarded as an abuse of due process. When members of the inquiry engage in cross-examination, they might create the impression that they were from the start, hostile to witnesses appearing before them. Moreover, there is no accused as such and no definite criminal charge, and yet the atmosphere created by inquisitorial style tribunal proceedings still

⁵²² Moskowitz, M. (1995). "The OJ Inquisition: A United States Encounter with Continental Criminal Justice, " *Vanderbilt Journal of Transnational Law* 28: 1121.

lends them an aura of determining criminal guilt and liability, as opposed to simply establishing the truth.⁵²³ This can lead to allegations of abusing natural justice in a Kangaroo Court or Inquisition type of procedure. “Kangaroo Court” is an Americanism that means “an unfair, biased, or hasty judicial proceeding that ends in a harsh punishment.”⁵²⁴

Inquiry proceedings have also been likened to the Star Chamber, due to their extensive coercive powers and tendency to interfere with individual rights such as the right to privacy, the right to liberty and the right to due process.⁵²⁵ The Star Chamber was a 17th century English Court that sat in the Palace of Westminster, mostly associated with King Henry VII. It was composed of Privy Counsellors and Common Law Judges, and supplemented the activities of the Courts by trying prominent people considered too powerful to be convicted by ordinary courts. It was characterised by secret proceedings, with no indictments, no right of appeal, no juries, and no witnesses. The only evidence allowed was written evidence. It is therefore not surprising that it evolved into a political weapon and became a symbol of the abuse of power by the English monarchy and courts.

Present day inquiries, particularly those that investigate governmental wrong-doing have also been accused of witch-hunting, of being used to tarnish and get rid of political rivals

⁵²³ Keeton, G. (1960). *Trial by Tribunal: A Study of the Development and Functioning of the Tribunal of Inquiry*; Museum Press, London

⁵²⁴ The Free Dictionary, <http://legal-dictionary.thefreedictionary.com/Kangaroo+Court>, accessed 09 February 2011.

⁵²⁵ Grant, H. (2002). *Commissions of inquiry : the modern day star chamber?* PhD Law Thesis, University of Queensland.

and opponents.⁵²⁶ This is because the inquisitorial mode allows damaging allegations to be made against persons who may or may not be wholly responsible for the wrong that occurred. Such persons would inevitably feel unfairly treated and that their right to due process had been violated. Keeton says that the issue is to weigh this negative aspect of the inquiry process with the positive role they play in enhancing accountability and decide whether the price to be paid for “the truth” is worth the discomfort and displeasure to a few individuals.⁵²⁷

In a country such as Uganda where legal literacy levels are quite low, people may mistake inquisitorial proceedings for criminal trials. This lack of clarity can be taken advantage of by the regime to legitimate itself to the citizens by showing that it is committed to anti-corruption and has put some officials on trial. On the other hand, as I will show in chapter 6, this has had a delegitimizing effect in the long term, when people become disappointed that the “trial” did not result in any convictions.

4.3.7 Evidence

In some countries such as Australia, Canada and even Uganda, Commissions are given powers to summon any witnesses and examine them under oath, and to order for the production of documents. Thus, anyone summoned to appear before the inquiry is compelled to do so under pain of being referred to the Director Public Prosecutions to be

⁵²⁶ Mbaku, J. M. (1996). "Bureaucratic Corruption in Africa: The Futility of Cleanups " *The Cato Journal* 16(1): 99-118

⁵²⁷ Keeton, (1960) op. cit.

prosecuted for contempt of the inquiry.⁵²⁸ However, this provision has never been invoked in Uganda as people summoned to appear have generally done so. Even the President of the Republic was willing to testify before the Commission of Inquiry into the Purchase of Junk helicopters by the Ministry of Defence, in spite of the fact that the Commission had to move to him and conduct its hearing at his official residence.⁵²⁹

The issue of witness compulsion has been the subject of litigation in Australia, in the cases of *Attorney General or Commonwealth Australia v. Colonial Sugar Refinery Company*⁵³⁰ and in *McGuinness v. Attorney General of Victoria*⁵³¹, and in both instances the Court held that the right not to be compelled to testify is sacrosanct under Common Law, and cannot be taken away by a Commission of Inquiry. Of course this position is overruled by the above statutory provision in Uganda.

The discussion above shows that inquiries are a unique device that is versatile and flexible and can be utilised to achieve a variety of purposes. Moreover, their structural features encapsulate many key components of the good governance discourse. These include: judicial independence, which is enabled when judges are appointed to chair inquiries; media freedom, promoted through the media's reportage of proceedings; civil society participation, promoted through public hearings where members of the public are free to attend; and transparency and accountability which are promoted when government

⁵²⁸ See for example, section 9 of the Commissions of Inquiry Act of Uganda.

⁵²⁹ Mugisa, A. And M. Olupot, (2001) "Museveni testifies on copters," *The New Vision*, 7 June 2001, Kampala.

⁵³⁰ [1914] A.C. 237 at 257

⁵³¹ (1940) 63 C.L.R. 73

officials are literally made to account for their decisions and actions. These features of inquiries make them amenable to donors because they provide evidence that good governance is working; to the state because it can show that it is a good governor; and to the citizens because they are given an opportunity to see state officials “on trial.” In the next section, I analyse the theoretical proposition that what makes inquiries popular is their ability to enhance regime legitimacy.

4.4 The Role of Commissions of Inquiry in Governance

4.4.1 Why appoint a Commission of Inquiry?

The circumstances under which inquiries are appointed differ greatly, but generally the appointment of an inquiry is preceded by allegations and rumours of official wrongdoing, omission or error, leading to national crises of confidence in the integrity, ability and discretion of public authorities. “Public suspicion that something morally unacceptable has happened is often accompanied by a strong public sentiment that something should be done about the wrongdoing and that a ‘cover-up’ must not be allowed.” Thus follows a need for “truth finding” in order to restore public confidence in the machinery of government.⁵³² In Uganda where the state is beleaguered by accusations of corruption, inefficiency and of being “neo-patrimonial,” appointing a Commission of Inquiry can be a way of reiterating the legal-rationality of the State and its commitment to “good governance.”

⁵³² Centa and Mackelm, (1984) op.cit., at p. 943.

Prasser offers a catalogue of the various reasons why governments appoint inquiries: to provide an independent response to a crisis; to investigate allegations of impropriety; to obtain information; to define policy problems; to provide government with policy options; to review policies, programs or organisations; to resolve public controversy; to help governments manage policy agendas; to justify government decisions and to help governments decide what to do about previous promises.⁵³³ However, it would appear that there are always underlying unstated political reasons for their appointment. As Ashforth observes,

although governmental inquiries typically engage in fact-gathering and argument in order to produce policy-oriented recommendations, their labours rarely produce policy results commensurate with the effort and expense of the inquiry. Nor are they usually accorded the time and resources to fully investigate the matters with which they are charged... (hence)...it would seem reasonable to assume that there might be reasons for the existence of Commissions which go beyond their expressed purposes.⁵³⁴

Many scholars have cynically suggested that they are intended to obfuscate and delay or to ‘white-wash’ the government’s image, to forestall criticism, ‘reassure the public that something is being done,’ buy time and breathing space following a scandal; or to find scape-goats and apportion blame.⁵³⁵ Such inquiries would fall in the category of what

⁵³³ Prasser (2003) op. cit.

⁵³⁴ Ashforth (1990) at p. 1

⁵³⁵ See: Prasser, S. (1982), "Public inquiries: Their use and abuse," *Current Affairs Bulletin* 68(9): 4–12; Sedley, S. (1989), "Public Inquiries: A Cure or a Disease," *Modern Law Review* 52: 469; Hart, J. (1995). "Presidential Lightning Rods: The Politics of Blame Avoidance." *American Political Science Review* 89(4): 1021-1022; Drewry, G. (1996), "Judicial Inquiries and Public Reassurance," *Public Law*: 368–83; Wells, C. (1999). "Inquiring into Disasters: Law,

Arendt refers to as the “mass manipulation of fact and opinion;” “modern political lies that deal efficiently with things that are not secrets but are known to practically everybody;” “image-making... supposed not to flatter reality but to offer a full-fledged substitute for it.”⁵³⁶

However, Ashforth argues that these cynical reasons “cannot suffice in accounting for the abiding significance of the institution, nor its widespread manifestations in States of various forms.”⁵³⁷ Hence, scholars have begun to dig deeper and try to go beyond conventional understandings of inquiries. Sulitzeanu-Kenan sought to empirically investigate why, despite the labelling of inquiries as “whitewash” by the public, they are highly sought by the public in the aftermath of a disaster or a scandal. Using the Hutton Inquiry into the Death of Dr. David Kelly as a case study, she offers the hypothesis that public inquiries play a “providing confirmation” role. This happens when political rivals, the press and the public demote the event that led to the inquiry on the public agenda, due to the government’s willingness to be criticised and in a way, “pay” for the misdeed through the prospect of a negative authoritative evaluation.⁵³⁸

Politics and Blame," *Risk Management*, 1: 7-20 and Elliot, M. (2002). "Public Inquiry: Panacea or Placebo?" *Journal of Contingencies and Crisis Management* 10(1): 14-25

⁵³⁶ Arendt, H. (1977) *Between past and future: eight exercises in political thought*, London: Penguin Books, at p.252.

⁵³⁷ Ashforth(1990) op. cit, p. 2

⁵³⁸ Sulitzeanu-Kenan (2006), op. cit.

Ashforth and Gilligan put forward the theory that when viewed through various lenses, inquiries' major purpose in modern democratic polities is that of legitimation.⁵³⁹

Legitimacy is a political psychological construct. Tyler gives a definition which is useful in explaining Ashforth and Gilligan's theoretical perspective on the role of inquiries:

Legitimacy is a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just. Because of legitimacy, people feel that they ought to defer to decisions and rules, following them voluntarily out of obligation rather than out of fear of punishment or anticipation of reward. Being legitimate is important to the success of authorities, institutions, and institutional arrangements since it is difficult to exert influence over others based solely upon the possession and use of power. Being able to gain voluntary acquiescence from most people, most of the time, due to their sense of obligation increases effectiveness during periods of scarcity, crisis, and conflict.⁵⁴⁰

Legitimation is therefore a useful all-encompassing theory for understanding the role of inquiries, because it can apply whether inquiries are intended as a white-wash, a scape-goating mechanism, and a blame avoidance or blame acceptance mechanism. At this point, I will consider the theory of legitimation in greater detail.

⁵³⁹ Ashforth, op. cit. and Gilligan, G and J. Pratt(eds) (2004) *Crime, Truth and Justice: official inquiry, discourse, knowledge*, Devon: Willan Publishing.

⁵⁴⁰ Tyler, T.R. (2006) "Psychological perspectives on legitimacy and legitimation," *Annual Review of Psychology* 57:375-400, at p.1.

4.4.2 Commissions of inquiry as legitimization devices

Burton and Carlen's analysis of official discourse first proposed a view of inquiries as devices for repairing crises of legitimacy in government. Using Marxist theory and Foucaultian discourse analysis, they argued that governments use the 'lay intelligentsia' of judges and experts to transmit forms of knowledge into political practices, thereby replenishing official arguments with both established and fresh ideas.⁵⁴¹ Ashforth observes that this in turn allows the powers that be to govern according to principles of knowledge generally deemed to be 'true.' Through political struggle and debate, inquiries produce a rational and scientific administrative discourse which is crucial to governing.⁵⁴²

When appointed to inquire into a particular crisis, their task is to "represent failure as temporary, or no failure at all, and to re-establish the image of administrative and legal coherence and rationality."⁵⁴³ The process of inquiry aims at reconstructing the "State's fractured image of administrative rationality and democratic legality."⁵⁴⁴ This is pertinent in "neo-patrimonial" Uganda, where administrative rationality is not merely fractured but regarded as a farce.

Also, it is important to note that reconstructing an image of democratic legality was especially important in the late 1990s and early 2000s when the NRM government was

⁵⁴¹ Burton, F. and P. Carlen (1979). *Official Discourse: On Discourse Analysis, Government Publications, Ideology and the State*, Routledge & Kegan Paul Books

⁵⁴² Ashforth, op. cit.

⁵⁴³ McClean (2001) op. cit, at p. 48.

⁵⁴⁴ Burton and Carlen, (1979) op. cit. at p.51.

under pressure to abandon the “movement system” in favour of multipartyism. Thus, inquiries were crucial in the production of an anti-corruption discourse that would legitimate the NRM government before its donors as being legal-rational (as opposed to patrimonial); democratic and not dictatorial. This role of inquiries in promoting accountability within democratic states was analysed by Thomas, who alluded to them as “democratic pluralism at work.”⁵⁴⁵ They represent an attempt by the state to illustrate its commitment to heeding public opinion. The public establishment of facts through an inquisitorial process is a good demonstration of democratic conflict resolution and action. Thus they provide a “modicum of accountability.”⁵⁴⁶ In States like Uganda which are under pressure to demonstrate that they are democratic, inquiries can be viewed as “good governance” in action.

Gilligan notes that inquiries are legitimating either actively, by findings that exonerate or justify state action, or passively, by remaining silent about key failures by state agents. Other inquiries can be subversive, taking positions that are contrary or even hostile to the state. Nevertheless, I propose that the distinction proposed by Gilligan is redundant, because “subversive” inquiries too, can have a legitimating effect.⁵⁴⁷ Indeed, in a status quo characterised by intense media scrutiny, it may be in the government’s favour if the inquiry findings are contrary or even hostile towards it in order to avoid claims of white-washing. Moreover, according to Sulitzeanu-Kenan, the importance of inquiries lies

⁵⁴⁵ Thomas, P. A., (1982), “Royal Commissions,” *Statute Law Review*: 40-50

⁵⁴⁶ Gilligan (2002) op. cit, at p.14.

⁵⁴⁷ Gilligan, G. (2004) “Official Inquiry, truth and criminal justice,” in Gilligan, G., and J. Pratt, *Crime, Truth and Justice: official inquiry, discourse, knowledge*; Devon: Willan Publishing, Chapter 1, pp. 11- 25.

primarily in the fact that the government pays for its misdeeds through submitting to a negative authoritative evaluation.⁵⁴⁸

A recent example of an inquiry that has been decried for performing a legitimating function is the Hutton Inquiry into the death of Dr. David Kelly, a government scientist involved in the issue of whether or not there were weapons of mass destruction in Iraq. Despite being hailed for the quality of his investigation, Lord Hutton's report was later dismissed as a whitewash because it minimised the role government in Dr. Kelly's suicide, and instead laid the blame at the feet of the BBC.⁵⁴⁹ It would appear that any inquiry that exculpates the government of wrong doing or chooses to be silent about government wrong doing while laying the blame on some extraneous factor is generally bound to be dismissed as a whitewash. On the other hand, an inquiry that is critical of the government and squarely apportions blame to particular officers or departments is bound to be regarded as more authentic and in keeping with the demands of justice and accountability, indeed, thereby ultimately achieving a legitimating effect.

A subversive inquiry is regarded by Gilligan as one that embarrasses the government and its agencies, and uncovers unexpected truths.⁵⁵⁰ A commonly cited example is the Macpherson Inquiry into the death of British teenager Steven Lawrence, who was killed for racist reasons. The investigation into his murder was subsequently bungled by the

⁵⁴⁸ Sulitzeanu-Kenan, op. cit.

⁵⁴⁹ Wring, D. (2005). "Politics and the Media: The Hutton Inquiry, the Public Relations State and Crisis at the BBC." *Parliamentary Affairs* 58 (2): 380-393

⁵⁵⁰ Gilligan, op. cit.

Police, leading to an acquittal of the accused and the subsequent inquiry. The inquiry found that the Metropolitan Police was “institutionally racist,” and has become one of the most positively regarded inquiries in present-day Britain.⁵⁵¹ One commentator referred to the outcome of the inquiry as “one of the most important moments in the modern history of criminal justice in Britain.”⁵⁵² Hence, subversion ultimately served a legitimization purpose and Gilligan’s distinction is unnecessary.

The ability to be legitimating through whitewashing, or to legitimate in a more subtle way through exposure of governmental wrong doing is what makes inquiries an ideal anti-corruption mechanism for a country such as Uganda, whose polity has a multiplicity of intersecting and yet contradictory interests, that is, the donors, the state and the civil society as represented by the media and unco-opted elite. Inquiries as “good governance in action,” enable the state to show the donors that it is complying with conditionality, whilst simultaneously showing the citizens that the regime is committed to anti-corruption. In the case of Uganda, the ability of an inquiry to reach a conclusion that is disfavoured to the State, has a legitimating effect because the government is thereby seen to pay for its misdeeds through a negative authoritative evaluation by the judiciary. Moreover, it reiterates the independence of the judiciary and the authenticity of the inquiry process; thereby reiterating the State’s legal rationality and democraticness.

⁵⁵¹ Report of the Stephen Lawrence Inquiry by Sir William MacPherson of Cluny, 1999.

⁵⁵² BBC News, *Q & A: Stephen Lawrence Murder*, 05 May 2004, at <http://news.bbc.co.uk/1/hi/uk/3685733.stm>, last accessed 09 February 2011.

4.4.3 Legitimation through truth-finding

Whereas the findings and recommendations of an inquiry as contained in the report are of great importance to the legitimation purpose, this thesis emphasises that the inquiry proceedings themselves, that is, the cross examination of witnesses under intense public scrutiny, are just as important as the final report in the legitimation process. After all, in inquisitorial-style proceedings such as those adopted by inquiries, fact-finding and the attribution of fault go hand in hand. Furthermore, the recommendations made by commissions of inquiry are not binding upon the government, which is free to ignore or modify them as it sees fit. I therefore agree with Sheriff who maintains that it is the form and structure of the inquiries that is important, and not necessarily their stated purpose as contained in the terms of reference.⁵⁵³ In particular, she draws attention to public participation as the factor which enables inquiries to promote social harmony. Similarly, research geared towards evaluating the effectiveness of UK Prison Inquiries showed that for a significant number of people, the strength of inquiry (relating to questioning and cross-examination) was a significant factor and that the outcome of the inquiry regarding follow-up action did not matter as much as the process itself.⁵⁵⁴

However, the truth-finding process of inquiries is a potentially controversial one, due to the nebulous nature of “truth.” As McMullan and Mcclung emphasise,

⁵⁵³ Sheriff, P. E. (1983). "State Theory, Social Science, and Governmental Commissions." *American Behavioral Scientist* 26(5): 669-680

⁵⁵⁴ Hancock, N & Liebling, A (2004), “Truth, Independence and Effectiveness in Prison Inquiries”, in Gilligan, G & Pratt, J (eds). *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge*, Willan Publishing, Cullompton.

Truth... is a difficult concept. Its definition, identification and verification are rarely uncomplicated and almost always implicated in complex political and communicative processes involving perception, representation and interpretation. Yet civil proceedings, public courts, criminal investigations, special state tribunals, coroner's inquests, judicial reviews, public inquiries and truth commissions all claim, in theory at least, to offer mechanisms, rules and procedures by which "truth" can be aggregated, evaluated, confirmed and denied.⁵⁵⁵

Taking into account the above view, and without digressing into post-modernist arguments about what constitutes the truth or whether truth can be said to exist, this study takes the position that the importance of "truth" lies more in the process of establishing it rather than the outcome.

McMullan and McClung note that "simple truth" is a myth and that establishing facts can be controversial. Crocker observes that even a Truth Commission may have a difficult time agreeing on what constitutes the truth. Members may disagree on who or what is responsible for wrongs that happened, resulting in minority reports, which can undermine the entire process of the inquiry and the resulting report.⁵⁵⁶ Indeed, this is what befell the 2002 Commission of Inquiry into Uganda Revenue Authority, where two of the Commissioners dissociated themselves from the final report due to disagreement over the manner in which the Commission Chair had apportioned blame for corruption in Uganda Revenue Authority. In a subsequent civil case challenging the report, the High Court held

⁵⁵⁵ McMullan, J. and M. McClung (2006). "The Media, the Politics of Truth, and the Coverage of Corporate Violence: The Westray Disaster and the Public Inquiry." *Critical Criminology* 14(1): 67-86.

⁵⁵⁶ Crocker, D.A., (2000), "Truth commissions, transitional justice, and civil society," in R. Rotberg & D. Thompson (eds), *Truth versus Justice: The Morality of Truth Commissions*, Princeton NJ: Princeton University Press, pp. 99-121

that the resulting report could not be said in law to be a report of the Commission, because it was signed only by the Chair and the Secretary and not by all the members of the Commission of Inquiry.⁵⁵⁷

Foucault notes that truth is produced by power and each directly impact one another.⁵⁵⁸ He further notes that there are four questions about truth-telling that are of vital importance: “‘who is able to tell the truth, about what, with what consequences, and with what relation to power.’”⁵⁵⁹ Thus, inquiry findings are regarded as objective truth because they are chaired by judges assisted by other persons of “public standing” who are supposedly impartial and expert in their field of knowledge, and presumably therefore, incapable of lying.⁵⁶⁰

In agreement with Foucault, McMullan and McClung say that “truth” is often registered by and through professions who strategically “take charge” of social issues. These groups - scientists, business managers, doctors, lawyers; produce “official discourses”, and induce effects of power through claims-making. Such “disciplines” are accredited as authoritative news sources about health, war, crime, the economy, social disasters.⁵⁶¹ Hence, judges and other prestigious members of inquiries are taken as the ideal profession

⁵⁵⁷ See Mwenda A., (2004) *Commissions of Inquiry: A Mockery of Justice*, The Monitor, 7 March 2004. This inquiry is discussed in greater detail in chapter 5.

⁵⁵⁸ Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, Brighton: Harvester Press. p.1

⁵⁵⁹ Ibid.

⁵⁶⁰ Cartwright, T. J. (1975). *Royal commissions and departmental committees in Britain: a case-study in institutional adaptiveness and public participation in government*, Hodder and Stoughton, London

⁵⁶¹ McMullan and McClung, op. cit.

or discipline to dig up the truth during crises and make appropriate recommendations. Judges, rather than politicians are crucial because as Arendt observes, “no one has ever doubted that truth and politics are on rather bad terms with each other, and no one... has ever counted truthfulness among the political virtues. Lies have always been regarded as necessary and justifiable tools not only of the politician’s or the demagogue’s but also of the statesman’s trade.”⁵⁶² In Uganda, the reliance on judges is even more pertinent because judicial independence is a key element of the good governance discourse, and proof of it is therefore one of the conditions attached to foreign aid. A commission of inquiry chaired by a judge provides an ideal forum where such independence can be clearly exhibited.

The “truth” that emerges from an inquiry process is notable not only because of the source from which it emerges (members who are lawyers, judges or other persons of “good public standing”) but also because of its mass appeal, enabled by the media’s role in broadcasting it widely. We saw earlier on in this chapter that the media’s role in transmitting the proceedings of inquiries is crucial to the “publicness” of inquiries. Hence, media coverage is inextricably linked to the truth-finding process and legitimization function of inquiries, as was earlier argued by the Warwick Inquest Group “reporting... becomes the justification for holding (the inquiry).”⁵⁶³ We saw in the previous chapters that promoting media freedom has been a key element of good governance discourse, and that indeed the Uganda government has allowed some space for media freedom and public

⁵⁶² Arendt (1977) op. cit, at p.227

⁵⁶³ Warwick Inquest Group, (1985) “The Inquest as a Theatre for Police Tragedy: The Davey Case,” *Journal of Law and Society*, (12) 1: 35-61.

debate. By allowing extensive media coverage of public proceedings, judicial inquiries facilitate the Uganda government's ability to show all the parties concerned that it is a good governor.

4.4.4 Inquiries as “theatres” of legitimation

The enduring fascination with the truth-finding process of the public inquiry lies in their politically symbolic value as inquisitorial devices for establishing facts. Symbolic politics, according to Edelman's hypothesis, emphasises the emotional and psychological aspects of symbols in politics, particularly the role they play in reassuring the public. One of the relevant examples he gives are public exercises in self-criticism that are popular in Communist regimes. He describes them as verbal recounts of political acts which are geared towards bringing gratification that something is being done about the situation. Such dramatic symbolic gratification is useful in various political situations including election campaigns, policy battles and international relations; and is the substitute for taking concrete action.⁵⁶⁴ Inquiries are therefore symbolic devices for self-criticism and public reassurance.

The quasi-judicial setting within which inquiries take place serves to further strengthen their symbolic appeal. Edelman notes that political settings involving formal government proceedings are highly contrived.⁵⁶⁵ Kiss says that inquiries direct a “staging of a national

⁵⁶⁴ Edelman, M. (1973), *The Symbolic Uses of Politics*, Illinois: University of Illinois Press.

⁵⁶⁵ Ibid.

morality play.”⁵⁶⁶ As quasi-judicial proceedings, it would not be far-fetched to compare inquiry proceedings with analyses of judicial proceedings as theatrical forms. Jeremy Bentham early on described a courtroom as a “judicial theatre” or “theatre of justice.”⁵⁶⁷ Although lacking in the costumery and ceremony of the courtroom, the fact that the membership of inquiries is dominated by members of the legal profession is a stark reminder of the similarity between inquiry proceedings and public trials. The attendance of members of the public at proceedings has been likened to the audience, an essential feature of theatrical performances. Add to this the atmosphere of conflict and suspense created by the questioning and cross-examining of witnesses, and the resulting effect is an artful production.⁵⁶⁸

The drama production that is an inquiry process has also been referred to by Carlen as a “play of governance.”⁵⁶⁹ Carlen’s reminder of the impossibility of arriving at an absolute truth reiterates that “the play’s the thing.” The view of public inquiries as a form of theatre was also reiterated in a study by the Warwick Inquest Group on the process of inquest.⁵⁷⁰ These views acknowledge the value of legal processes aimed at establishing truth is in the process itself and not in its end result. Since final resolution is impossible,

⁵⁶⁶ Kiss (2000), *Moral Ambition within and Beyond Political Constraints: Reflections on Restorative Justice*. In *Truth V. Justice: The Morality of Truth Commissions*, edited by R. I. Rotberg and D. Thompson. Princeton: Princeton University Press, p.70

⁵⁶⁷ Bentham, J. (1838). “Rationale of Judicial Evidence,” *VI The Works of Jeremy Bentham*, J. Bowring (ed), p. 354.

⁵⁶⁸ Ball, M. (1975). “Play’s the Thing: An Unscientific Reflection on Courts under the Rubric of Theater, The.” *Stanford Law Review* 28: 81. See also Ghai, Y. (1999). “Play in Two Acts: Reflections on the Theatre of the Law, A.” *Hong Kong Law Journal* 29: 5.

⁵⁶⁹ Carlen (2004), op. cit. in Gilligan and Pratt (2004) op. cit. at p. 243

⁵⁷⁰ Warwick Inquest Group, (1985) “The Inquest as a Theatre for Police Tragedy: The Davey Case,” *Journal of Law and Society*, (12) 1: 35-61.

pragmatism demands that the process of resolution itself must suffice. This would explain the conundrum as to why inquiries continue to be in demand despite scepticism that they would be nothing more than a whitewash.⁵⁷¹

The theatrical production of a public inquiry is however, not for entertainment, but for penance. It is a theatre where interested parties and particularly, aggrieved members of the public can hope to gain some sort of recompense by watching the alleged culprits being cross-examined and embarrassed by having to answer difficult questions. Inquiries serve as trials, not for the determination of guilt and innocence, but for establishing morality - who was right and who was wrong; who was to blame? In the Iraq inquiry, interested members of the British public, particularly relatives and friends who lost loved ones during the Iraq war, looked forward to the day when former Prime Minister, Tony Blair, who made the decision to go to war, would be questioned by the members of the inquiry. Many were disappointed when they perceived the cross-examination as not being rigorous enough. One could infer that the public was disappointed that the questions were not asked in a manner that would have left Tony Blair embarrassed and in a tight-corner. They were disappointed that the inquiry members were “soft” on him, enabling him to justify his decision to go to war without offering an apology. An apology by Blair would have been the high point of the inquiry and would have served the needs of restorative justice.

⁵⁷¹ Pat Carlen, (1976) "The Staging of Magistrates' Justice," 16 *British Journal of Criminology* 48

Failing this, at the end of his testimony, he was booed and heckled, and cries of “It’s a whitewash!” rang across Britain.⁵⁷²

Nevertheless, such is the power of the inquiry process that Blair was in any case shamed in the media for avoiding the shame and the blame. Despite his adamant refusal to apologise, the inquiry process has given those who disapprove of his actions a visible platform to voice their disapproval of him. Thus, inquiry proceedings allow all the interested parties to confirm their personal decisions concerning who is innocent or guilty. Where the report resonates with their *ex ante* decisions, well and good; where it finds differently, it will be dismissed as a whitewash. It is this factor that diminishes the importance of the inquiry report.

Accordingly, the event or process of inquiry can be viewed as a form of “truth as justice” as envisaged under the paradigm of the South African Truth and Reconciliation Commission whether or not explicitly intended as such.⁵⁷³ The “telling” and “exposure” of illegal or immoral acts that were carried out behind closed doors is supposed to embarrass and shame corrupt officials, and thus fulfil the demands of restorative justice. Restorative

⁵⁷² See Simon Jenkins, *The Guardian* 30 January 2010, at <http://www.guardian.co.uk/uk/2010/jan/29/tony-blair-iraq-inquiry-chilcot>, accessed 31 January 2010.

⁵⁷³ Hayner, P. B. (1994). "Fifteen Truth Commissions-1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16: 597; Popkin, M. and N. Roht-Arriaza (1995). "Truth as Justice: Investigatory Commissions in Latin America." *Law & Social Inquiry* 20(1): 79-116; Kaye, M. (1997), "The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratisation: the Salvadorean and Honduran Cases." *Journal of Latin American Studies* 29(03): 693-716; and Rotberg, R. I. and J.A. Thompson(2000). *Truth V. Justice: The Morality of Truth Commissions*, Princeton University Press.

justice focuses on admission of wrong-doing by the offender, acknowledgement of the harm caused to the victim(s), and reparation for the harm.⁵⁷⁴

Even where those implicated in wrong doing do not acknowledge their wrong, the inquisitorial process allows for *res ipsa loquitur* - for the facts to speak for themselves as omissions and commissions by various people comes to light. Thus, the “justice” envisaged is not in the positivist sense of the word, but more in tune with natural law conceptions of what is right and wrong. In this way, truth as justice not only serves the end of justice and accountability, but those of morality as well. The concept of shaming is after all, one which is based on ostracising as punishment for the violation of particular norms. It can also be said that inquiries also serve as forums for the reinforcement of social norms and morals, where the norm that is violated would depend on the subject of the inquiry. Indeed, one can argue that the huge public outcry that precedes and necessitates a Commission of Inquiry is usually due to the fact that a norm or a moral value has been violated. Hence, the Iraq inquiry was necessary because the war was regarded as an immoral and unjustified attack on a Sovereign country which cost Britain the lives of many of its citizens. Those who lost their lives during the war did not die justly as soldiers fighting for their land, but died unnecessarily under what is regarded by some as the selfish whims of Tony Blair and George Bush.⁵⁷⁵

⁵⁷⁴ Johnstone, G. (2002). *Restorative justice : ideas, values, debates*. Cullompton, Devon, UK; Portland, Or., Willan Publishing.

⁵⁷⁵ *The Telegraph*, 10 October 2009, “‘Tony Blair has ‘blood on his hands,’ says father of killed soldier,” at <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/6286081/Tony-Blair-has-blood-on-his-hands-says-father-of-killed-soldier.html>, last accessed 09 February 2011.

4.5 Chapter Conclusion

This chapter has shown that inquiries are popular throughout the world, due to their unique features and functions that enable governments to use them as devices for legitimation. Their uniqueness lies, firstly, in being *ad hoc* quasi-judicial bodies that are appointed by the executive yet independent from it; secondly, in their ability to allow public participation in an inquisitorial fact-finding process that takes place under intense media scrutiny; and lastly, in the fact that in many countries, the government retains discretion regarding implementing the findings and recommendations of the inquiry. Thus, they combine a number of distinctive features that no other governmental body can replicate. Keeton observes that despite their shortcomings, there is no other means available within the apparatus of government that can satisfy the demands for independence, impartiality and rigorous fact-finding during a time of crisis.⁵⁷⁶

The legitimation function of inquiries is linked to their role as truth-finding devices. During times of crisis, they help to establish “whodunit” through a participatory inquisitorial process that enables the various parties concerned to reach their own personal conclusions about who was responsible, regardless of the inquiry’s outcome. In this way, truth equals justice as public officials responsible for the crisis are publicly named and shamed. By thus paying for its misdeeds through a negative authoritative evaluation, the government restores its legitimacy. Indeed the possibility that the recommendations will be ignored or substantially modified illustrates the point that the process matters more than

⁵⁷⁶ Keeton (1960), op. cit.

the outcome. This potential irrelevance of the final outcome is what renders inquiries symbolic “theatres” of legitimation.

In Uganda, a donor-funded neo-patrimonial state, it is likely that the government’s preference for inquiries to address corruption is due to the factors discussed above. We saw in chapter two that the Uganda PRSP and PRSP Progress reports have frequently mentioned commissions of inquiry as evidence of the government’s commitment to fighting corruption, which they justify as the best approach in cases “where the situation is not amenable to conventional auditing and investigation procedures.”⁵⁷⁷ Although the government does not elaborate on this point, we can infer from the above discussion that commissions of inquiry are preferred because of their unique characteristics outlined above. These are, the fact that they are headed by judges whose independence is a requirement for “good governance;” the highly publicised inquisitorial fact-finding process which exhibits the aspects of good governance that emphasise transparency, media freedom and public participation; and the public shaming of government officials which exhibits a modicum of accountability.

Inquiries are therefore a political strategy which enables the government to show that it is fulfilling conditionality by being transparent and accountable, fostering judicial independence, media freedom and public participation; all of which are requirements of the good governance agenda. In addition, commissions of inquiry enable the government

⁵⁷⁷ See discussion in Chapter 2, at 2.2.4.

to placate its citizens that something is being done about corruption whilst ultimately protecting the patronage system by ignoring the recommendations for the actual criminal trial and conviction of the implicated public officials. In chapters 5 and 6, I present and analyse the findings of the field study to illustrate how this has been achieved.

Chapter 5

Commissions of Inquiry into Corruption in Uganda (1999-Present)

5.1 Introduction

In this chapter, I look at the role judicial commissions of inquiry into corruption have played in governance in Uganda. I start by looking at the legal framework that governs the appointment and proceedings of inquiries in Uganda. I then look at inquiries since 1986 when the present NRM government took power and embarked on a process of economic and political reform within the context of the “good governance” agenda prescribed by the International Financial Institutions and bi-lateral donors, before focusing on the corruption-related inquiries that are the main focus of this study.

The 1999 Commission of Inquiry into the Uganda Police Force marked the beginning of what I suggest was a new era of inquiries in Uganda, an era marked by intense media and public interest in inquiry proceedings which enabled them to serve not merely as conditionality fulfilment or patronage preservation devices, but also as good governance/anti-corruption-discourse generating theatres. The 2000 inquiry into the purchase of junk military helicopters (Junk Helicopters inquiry) came close on the heels of the Police Inquiry and has had a lasting impact on society in Uganda, particularly in exposing the corruption in the National Resistance Movement (NRM) ruling regime’s top leadership. It was followed by the 2002 commission of inquiry into allegations of corruption in Uganda

Revenue Authority (URA inquiry). Finally, the 2005 Commission of Inquiry into the Mismanagement of the Global Fund on HIV/AIDS, TB and Malaria (Global Fund inquiry) regarded by some as probably the most “successful” inquiry in the recent history of Uganda and also ironically seems to mark the end of the “inquiries” era, at least for the time being.

5.2 The Legal and Administrative Framework for Commissions of Inquiry

Commissions of Inquiry are governed by the Commissions of Inquiry Act of 1969.⁵⁷⁸

They may be appointed by the President or by a Minister.⁵⁷⁹ They are established by a Statutory Instrument known as a Legal Notice. Such Legal Notice lays down the terms of reference, the time frame for the commission’s work, the methods of work it may adopt as well as explicit naming of the chair, commissioners, secretary and counsel of the inquiry. Once appointed, Commissioners enjoy immunity from prosecution or civil liability.⁵⁸⁰

There are two notable issues concerning the fact that appointment of inquiries in Uganda is by the President on an *ad hoc* basis. Firstly, because the government is beholden to donors for its funding, the President is able to quickly respond to crises in governance arising from corruption scandals in order to reiterate that he is committed to the principles of good governance. This tactic worked successfully with the Global Fund inquiry, which

⁵⁷⁸ Cap. 166, Laws of Uganda, Vol. XXI.

⁵⁷⁹ Section 2 of the Commissions of Inquiry Act, Cap. 166 provides for presidential appointment of inquiries. However, Ministerial appointment is deemed to be authorised by the Transfer of Powers and Duties Act, Cap 260, Vol. 10, which provides that the President may delegate his functions to a Minister.

⁵⁸⁰ Section 10 of the Act.

I will discuss shortly. Secondly, as the appointing authority and the one to whom the report is presented, he can use his authority to suppress a report that is not favourable to him, as he did with the Junk Helicopters Inquiry report where he was implicated for influencing the award of the tender.⁵⁸¹

The choice of commissioners is in theory, an administrative matter handled by the Solicitor General from his metaphorical “book of the great and the good.”⁵⁸² During the period under review (1999-present), there has however, been a marked preference for Justices Sebutinde and Ogoola, as table 3 shows.⁵⁸³ In reality, it cannot be denied that political factors influence the appointment of the inquiry. For example, Justice Sebutinde, although appointed routinely to chair the 1999 Police inquiry, became a popular choice for subsequent inquiries due to the perception that she had done an excellent job with her unrelenting cross examination that left public officials literally lost for words.⁵⁸⁴ Justice Ogoola’s appointment on the other hand, may have been influenced by his comparatively milder approach to examining witnesses, after the URA inquiry was nullified on the grounds of Justice Sebutinde’s disregard for natural justice during the cross-examination of witnesses. He was also, notably, respected for his seniority as Principal Judge, his

⁵⁸¹ This inquiry and the report are discussed in greater detail shortly in the present chapter.

⁵⁸² Personal Interview with State Attorney in Solicitor General’s chambers, July 2009.

⁵⁸³ See Table 3, at p. 244, below. See also Appendix.

⁵⁸⁴ I discuss this in greater detail below at 5.4.1. Also recall the discussion on the Judiciary in chapter 3, where it was noted that Ugandan judges are respected for among other things, their Cosmopolitanism. Thus, it is interesting that both Sebutinde and Ogoola had spent a large part of their previous careers in international jobs; Sebutinde at the Commonwealth Secretariat in London and later, in Namibia; and Justice Ogoola at the IMF. This could be an important factor in their appointment as they might be seen as not being too closely connected to the government officials they would be investigating.

commercial law expertise and his international work experience as a former employee of the IMF.⁵⁸⁵

The wording of section 2 of the Act, which provides that inquiries “may” appoint a commission of inquiry, points to the fact that they are appointed on an *ad hoc* basis under Executive discretion. Thus, they are temporary and exist outside the day-to-day apparatus of government. This factor may enhance their function as legitimating devices. When a corruption scandal revealing that government funds have been stolen erupts, appointing an *ad hoc* Commission outside the normal anti-corruption apparatus shows that the government is taking the matter very seriously and can have a placating effect on the angry public as well as the donors. This tactic worked especially well when it was found that the Global Fund for HIV/AIDS and Malaria was being mismanaged by the Ministry of Health. The Global Fund headquarters in Geneva suspended the grants to Uganda, but when an inquiry was instituted, the suspension was lifted.⁵⁸⁶

Commissions of inquiry have the power to determine their own *modus operandi*, subject to section 2, which provides that the proceedings shall be held in public. Nevertheless, Commissioners have discretion to transfer the proceedings to be held in Camera if they deem fit. Section 8 provides that “Commissioners acting under this Act may make such rules for their own guidance, and the conduct and management of proceedings before

⁵⁸⁵ See Justice Ogoola’s profile, at <http://www.newvision.co.ug/D/8/12/467195>, last accessed 31 March 2011.

⁵⁸⁶ State House Uganda, “President meets Global Fund Delegation,” 11 November 2005, at <http://www.statehouse.go.ug/news.detail.php?category=Major+Speeches&newsId=659>, last accessed 03 February 2011.

them, and the hours and times and places for their sittings, not inconsistent with their commission, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit, subject only to the terms of their commission.”

Invariably, the procedure chosen has involved inquisitorial proceedings, which have been said by Keeton to be unavoidable to the fact-finding function of such bodies.⁵⁸⁷ In Uganda, a number of public officials appearing as witnesses before inquiries have been deeply offended by the inquisitorial style and what they perceive as the unjust imputation of guilt upon them. One of them who was a respondent to this study likened the Global Fund Commission of Inquiry in Uganda to a Kangaroo Court.⁵⁸⁸ In *Annebrit Aslund versus the Attorney General*⁵⁸⁹, the plaintiff was the Commissioner General of Uganda Revenue Authority, which had been subjected to an inquiry process for allegations of corruption. She successfully sought an order of certiorari to quash the inquiry report and record of proceedings on grounds that the inquiry chairperson had abused natural justice when she called her incompetent and a liar during cross examination without giving her a chance to respond to the allegations.

Under section 9, the Commissioners have the powers of the High Court to summon witnesses, to call for the production of books, plans and documents and to examine witnesses and parties concerned on oath. Where the commissioners consider it desirable

⁵⁸⁷ See Keeton (1960) op. cit.

⁵⁸⁸ Personal Interview, 21 July 2009.

⁵⁸⁹ High Court Miscellaneous Application No. 441 of 2004.

for the purpose of avoiding expense or delay or for any other special reason, they may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to the interrogatories. In Uganda, the wide investigatory power of inquiries is one of the factors that makes them a better alternative to conventional criminal proceedings. As we saw in the previous chapter, the investigatory process for corruption cases in the criminal justice system is greatly hampered by lack of skilled and motivated staff and lack of equipment. There are frequent delays and cases are often abandoned due to lack of evidence. Inquiries have a time limit within which to present their findings. They are also able to combine investigation and fault-finding, which can help to address the evidence gap by allowing oral testimony to supplement the often inadequate paper trail. Moreover, intense public scrutiny ensures that public officials are wont to comply with the inquiry process, as opposed to low-key criminal investigations that could be more easily compromised.

When proceedings are concluded, commissions of inquiry are required to report to the President or Minister as the case may be, in writing. The report should detail the result of the inquiry and furnish a full statement of the proceedings of the commission and of the reasons leading to the conclusions arrived at or reported.⁵⁹⁰ The report is then reduced to a “White Paper” by the Solicitor General’s chambers, which is forwarded to Cabinet for discussion.⁵⁹¹ Cabinet may accept or reject the conclusions reached by the Commission. Moreover, Cabinet proceedings in Uganda are subject to a high degree of secrecy and are

⁵⁹⁰ Section 6 of the Commissions of Inquiry Act.

⁵⁹¹ Interview with State Attorney, July 2009.

even included in the category of information to which the public has no right of access under the Access to Information Act.⁵⁹² There is no legal obligation to publish the report or to implement the recommendations made by the inquiry. While this has caused endless consternation among donors and the public, it reiterates my earlier assertion that commissions of inquiry's chief importance lies in the proceedings, and not in the outcome. Moreover, in this "media" age, the government's reluctance to publish an inquiry's report serves little purpose because the truth has already been published by the media's reporting on proceedings.

5.3 Commissions of inquiry in Uganda (1986-1996)

Between 1986 and 1996, the NRM government busied itself with consolidating power and delivering on its promises to turn around politics and governance in Uganda. In his swearing in speech as new president on 29th January 1986, Museveni said:

No one should think that what is happening today is a mere change of guard; it is a fundamental change in the politics of our country.⁵⁹³

This statement established the benchmark by which Museveni's regime has since been evaluated, particularly with regard to corruption and its response to it.

⁵⁹² See the discussion on this Act in Chapter 3, at 3.2.1.

⁵⁹³ Museveni (1997) op. cit.

The inquiries that were set up in the initial years of NRM rule reflected this commitment to reform and righting the wrongs of previous regimes. Immediately it took power, the government appointed a commission of inquiry to “investigate violations of human rights, breaches of the rule of law and excessive abuses of power committed against persons in Uganda by the regimes in government during the period from 9 October 1962 to 25 January 1986.”⁵⁹⁴ Dubbed Uganda’s “Truth Commission” this inquiry did an excellent job of uncovering myriad atrocities committed by state agents of previous regimes against Ugandan citizens.⁵⁹⁵ As a result, subsequent analyses of its role assert that the Commission only served as a political strategy to provide legitimacy to the current government by discrediting previous regimes.⁵⁹⁶

When the NRM took over power in 1986, their manifesto “the Ten Point Programme” declared the elimination of corruption as one of their priorities. Hence, it was not long before corruption and mismanagement in public offices and state-owned enterprises became the subject of inquiries. In 1988, the government set up an inquiry into, among others, “corruption, misappropriation, coercion, embezzlement and general mismanagement of finances, property and staff of Uganda Tourist Development Corporation.”⁵⁹⁷ There were similar inquiries into the East African Steel Corporation, in which the government of Uganda had shares, as well as the Uganda Posts and

⁵⁹⁴ Commission of Inquiry into Human Rights Violations by previous regimes, 1986

⁵⁹⁵ Hayner, P. B. (1994). "Fifteen Truth Commissions-1974 to 1994: A Comparative Study." *Hum. Rts. Q.* **16**: 597.

See also

Hayner, P. B. (2006). "Truth commissions: a schematic overview." *International Review of the Red Cross* **88**(862): 295-310.

⁵⁹⁶ Ibid.

⁵⁹⁷ See Minister for Tourism and Wildlife , Legal Notice No. 3 of 1988.

Telecommunications Corporation in 1991 and 1992 respectively.⁵⁹⁸ These inquiries provided the legitimacy and justification for the privatisation of state-owned enterprises that was under way at that time. Even though privatisation was obviously being carried out at the behest of the IMF and World Bank Structural Adjustment Policies and their successor PRSPs, there was still a need to find local justification for the process, especially given the fact that Museveni and the NRM originally embraced Marxist-leaning ideologies on the role of the state and economic regulation and was being accused of “selling out” by acquiescing to the demands of the IFIs.⁵⁹⁹

5.4 Commissions of inquiry into corruption during the “good governance” era (1996-present)

The “good governance” era, discussed chapters 2 and 3, brought about many changes in the political, economic and social set up of Uganda. Aside from the privatisation of state enterprises and other macro-economic reforms, there also began a new era of electoral democracy, increased judicial independence, media freedom and participation of civil society organisations in government. The NRM government embarked on a series of populist reforms outlined in their takeover manifesto known as the Ten-Point-Programme. These reforms included the establishment of a Constitutional Review Commission, which eventually culminated in the first ever democratically enacted Constitution of 1995 by an

⁵⁹⁸ See Minister of Industry and Technology, (1991) *The East African Steel Corporation Commission of Inquiry Notice*, Legal Notice No. 4 of 1991. See also: Minister for Works, Transport and Communication, (1992) *The Uganda Posts and Telecommunications Corporation Commission of Inquiry Notice*, Legal Notice No. 4 of 1992.

⁵⁹⁹ See Museveni, (1997) op. cit., pp. 184-185.

elected Constitution Assembly. In 1996, there followed presidential and parliamentary elections. Uganda was then still governed through the Movement system based on individual merit as opposed to political parties. The presidential elections, supposedly based on individual merit and “no-party democracy,” were contested by incumbent Yoweri Museveni and Paul Ssemogerere of the Democratic Party, who was required by law to stand as an independent candidate and not as the leader of his party. The former won with 75% of the vote.

The late 1980s and 1990s were a golden era in Uganda – Museveni and his NRM enjoyed the favour and support of both IFIs and donors as well as the local population. Museveni was hailed as one of a “new breed of African leaders” by President Bill Clinton and other key figures in the international community such as then UK Minister for Overseas Development, Clare Short.⁶⁰⁰ The economy was booming, inflation was under control, public infrastructure was expanding. Government was more participatory than it had ever been, FM radio and TV Stations were opening up all over the country, and the air was full of optimism.⁶⁰¹

Nevertheless, the return to competitive politics in 1996 when the first elections in 16 years were held showed that Uganda still had significant problems. Firstly, they showed that the idea of a “broad-based government” based on the “the movement” to which all Ugandans

⁶⁰⁰ Oloka-Onyango, J. (2004). ““New-Breed” Leadership, Conflict and Reconstruction in the Great Lakes Region of Africa: A Sociopolitical Biography of Uganda’s Yoweri Kaguta Museveni.” *Africa Today*: 29 -52

⁶⁰¹ Mutibwa, (1992) op. cit.

belonged had holes in it; as the northern region of the country voted overwhelmingly against Museveni. During this time, there was a guerrilla war waged by Joseph Kony and the Lord's Resistance Army raging in northern Uganda, and the vote against Museveni was thought to be largely due to his failure to contain the war. Moreover, the elections were heavily characterised by use of money and other material inducements to influence the vote. The Parliamentary elections that were held soon after the presidential elections were also marred by monetisation. This exposed the level and extent of political corruption in Uganda and inevitably cast the spot-light on other forms of corruption that bedevilled the country.⁶⁰²

Hence began the publication of numerous corruption scandals in the newly liberalised media. These scandals mainly concerned the involvement of senior government officers and members of the National Resistance Movement in the privatisation process, which had started in the early 1990s. For example, it came to light that brother-in-law to President and Investment Minister Sam Kutesa divested Entebbe Airport Handling Services to himself, and Museveni's brother General Salim Saleh connived to obtain majority shares in Uganda Commercial Bank and Uganda Grain Millers Ltd.⁶⁰³ Corruption in the privatisation process came to light thanks to the vigilance of the newly elected Parliament, working hand in hand with the media. The Chair of the Parliamentary Parastatal Committee, Yona Kanyomozi, was a member of the opposition Uganda Peoples' Congress

⁶⁰² Muhumuza, William (1997) Money and Power in Uganda's 1996 elections. *Afr.j. polit. sci.*, Vol. 2 No. 1, 168-179.

⁶⁰³ BBC News (Africa) (1998) "Corruption mars Uganda Privatisation." Sunday December 20th 1998, at <http://news.bbc.co.uk/1/hi/world/africa/239072.stm>, last accessed 25 September 2010.

(UPC) party and proved to be a vocal critic of the government's handling of privatisation. The furore resulted in the establishment of a Parliamentary Select Committee on Privatisation, whose investigations confirmed that there was wrong-doing by Kutesa, Saleh and Matthew Rukikaire, Minister for Privatisation. While the latter two resigned their government positions, Kutesa adamantly refused to resign and was censured by his fellow parliamentarians. Despite the revelations, there were no criminal investigations or prosecutions of those implicated.⁶⁰⁴ Tangri and Mwenda suggest that this lack of action was because those implicated, as well as the Attorney General, the Inspector General of Government, the Head of the Criminal Investigations Department and the Director of Public Prosecutions were all from the same ethnic region and hence there was a massive cover up going on.⁶⁰⁵

Corruption in the privatisation process continued to be a key item on the media and hence the national agenda. There was outcry from Parliamentarians as well the general public regarding the lack of decisive action against those who had been implicated. The issue was also causing the government a lot of embarrassment before the international community and the donors, and rhetorical promises to take action were made. Unfortunately, as earlier discussed in chapter two, the donors were unwilling to admit that all was not well with their "showcase" and "star pupil" Uganda, and never came out strongly to decry what was

⁶⁰⁴ Tangri, R. and A. Mwenda (2001). "Corruption and cronyism in Uganda's privatization in the 1990s." *African Affairs* **100**(398): 117-133.

⁶⁰⁵ Ibid.

happening, although it is said that they did so in their private conversations with government officials.⁶⁰⁶

It was in this climate of mounting allegations of corruption against members of the first family and ruling elite that the judicial inquiry into the Uganda Police Force was appointed. Could it have been a ruse to distract the public from the discredited privatisation process and focus it instead on the failings of the Police Force? For Police corruption had always been a problem in Uganda, but was now being overshadowed by the revelations of grand corruption in the highest levels of government. Following the 1999 police inquiry, other inquiries into corruption-related matters were instituted in quick succession over the next 7 years; so that for a time, it appeared that there was always a corruption-related judicial inquiry going on. In 2000, about 6 months after the police inquiry concluded its work, the helicopter inquiry, was set up.⁶⁰⁷ It completed its work in 2001 and was followed in 2002 by the Uganda Revenue Authority inquiry, which went on until 2004. This was then followed by the Global Fund inquiry in 2005; which was the last one at the time of this study. I will now look at each of these inquiries in turn, before analysing why they were established and what the implications of their appointment were for governance in Uganda.

⁶⁰⁶ See the discussion on non-enforcement of aid conditionality in Chapter 2, at 2.2.4 .

⁶⁰⁷ Justice Sebutinde presented her report on the Police Inquiry to the President in June 2000, and the Helicopter Inquiry was set up in 2000; although the Commissioners were not sworn in until February 2001. See Yunusu Abbey and F. Kiwanuka, "Chopper Probe Starts," *The New Vision*, 23 February 2001, at <http://allafrica.com/stories/200102230220.html>, last accessed 12 February 2011.

Table 3: Commissions of inquiry into corruption Uganda (1999-Present)

1.	1999	To generally investigate allegations of corruption within the Police force and where necessary, make recommendations for the purpose of improving the efficiency and effectiveness of the Police Force	Justice Julia Sebutinde
2.	2000	To inquire into all the circumstances pertaining to the procurement, purchase, acceptance, delivery and payment for MI-24 helicopters for the army	Justice Julia Sebutinde
3.	2002	To inquire into Allegations of Corruption in Uganda Revenue Authority	Justice Julia Sebutinde
4.	2005	To inquire into Allegations of Mismanagement of the Global Fund to fight AIDS, Tuberculosis and Malaria	Justice James Ogoola

5.4.1. The Police Inquiry 1999

Background

The afore-mentioned 1986 Commission of Inquiry into human rights violations by previous regimes had thrown the spot-light on the Police Force as having been responsible for perpetrating various cases of torture, murder and other forms of abuse against the very civilians whom they were supposed to protect. That commission of inquiry noted that there was widespread corruption and abuse of office in the Police which had to be completely eradicated in order to restore confidence in the force as a protector and not an abuser of the citizens of Uganda.⁶⁰⁸

The bad reputation of the force was further exacerbated by the bungling of an investigation into the murder of prominent businessman, and rally driver, Gerald Kiddu, in

⁶⁰⁸ Report of the Commission of Inquiry into Violations of Human Rights, 1987.

1997.⁶⁰⁹ This caused public outcry as well as concern from the Executive branch of government. Accordingly, in 1999, the President appointed a Commission of Inquiry into Corruption and Abuse of Office in the Uganda Police Force. Lady Justice Julia Sebutinde was chosen as Chair. A Legislative Drafting expert educated at the University of Edinburgh, Justice Sebutinde had recently returned to Uganda in 1996 after working at the Commonwealth Secretariat in London and for the Namibia Government.⁶¹⁰

The terms of reference of the inquiry were:

To generally investigate allegations of corruption within the force generally and make recommendations for improving the efficiency and effectiveness of the Police;

To investigate specific allegations of corruption made against Chris Bakiza Director Criminal Investigations Department (CID), George Galyahandere Assistant Police Commissioner(ACP) for Crime, and Clever Byamugisha of the CID that they interfered in the investigations of various crimes after being bribed;

⁶¹¹

To investigate the mismanagement by the Police, of criminal investigations relating to various cases of murder.

⁶⁰⁹ Osike, F. (2001). "Sebutinde Report Out," *The New Vision*. Kampala. Rally driving is a popular sport in Uganda, with rallies attracting huge crowds of fans. There was therefore public outcry regarding the failure to apprehend whoever was responsible for Kiddu's death. He was shot in what appeared to be a car-jacking attempt.

⁶¹⁰ See her profile: "Sebutinde's star still rising" *The New Vision*, 29 July 2009, at <http://allafrica.com/stories/200907300162.html>, last accessed 10 February 2011. Her appointment to head this inquiry was routinely made by the Solicitor General's chambers on recommendation of the principal judge. Nevertheless I suggest that it was also influenced by the post-1996 election euphoria of Uganda's democratic reforms which included the increase in the number of women holding public office, as stipulated by the 1995 Constitutional provisions on Affirmative Action for women and other marginalised groups (Article 32). Indeed, Uganda at this time had a female Vice President, Specioza Wandira Kazibwe, the first one to be appointed in Africa.

⁶¹¹ Interestingly, all the officers singled out for investigation by the inquiry were from Western Uganda, where the President and most members of the ruling elite hail from. Could their singling out have been to deflect accusations of favouritism of people from that region?

Proceedings

Proceedings commenced in May 1999 and continued for a year until May 2000. As soon as the public hearings commenced, the commission captured the attention of the whole country, not only because it made the daily newspaper headlines, but also because it conducted hearings outside the capital Kampala, in a number of towns such as Hoima, Mbarara and Mbale. In this way, the commission became a truly national phenomenon. The Commission's presence in these towns caused immense excitement, not least because the chair, Justice Sebutinde, had been assigned presidential protection guards who would travel ahead of her in an open-topped army Jeep at high speed and honking loudly to warn hapless villagers to keep out of its path. The halls where the hearings took place were always fully packed.⁶¹²

The excitement caused by the commission was enhanced greatly by Justice Sebutinde's manner of conducting the proceedings. This was characterised by reaching out to the public, showing them sympathy and reassuring them that she would play her role in helping them to achieve justice. For example, during a hearing in which the commission considered the case of the unlawful killing of a young man, she said to his mother: "Justice must be done for this old woman. I want to assure you that whoever is implicated will pay."⁶¹³

⁶¹² Matsiko wa Mucoori, "Sebutinde fires up rural folk, many heads to roll in police," *The Monitor*, 6 November 1999, at <http://allafrica.com/stories/printable/199911060050.html>, last accessed 11 February 2011.

⁶¹³ *Ibid.*

Her approach to members of the public was juxtaposed with impatience and near hostility to police officers. Journalist Matsiko wa Mucoori, who covered the proceedings for *The Monitor* newspaper, described it thus:

Visibly alarmed and upset by the miscarriage of justice and perpetuation of criminality by the police, Sebutinde lost patience. She went full blast, roasting and castigating police officers. It was an interesting scenario seeing Sebutinde grill and roast the pot-bellied senior police officers like small boys... The Police officers who had turned themselves into village lords were humbled before the eyes of the very *wananchi*⁶¹⁴ they had been harassing at will... Scared district and regional police commanders humbled themselves as little kids awaiting punishment from a father. At one instance a district police commander failed to speak and Sebutinde offered a cold drink to improve his voice. It was an exciting moment for the public but to the police, it was the most embarrassing experience they had probably ever had in their lives of service in the force. You could read fear all over their faces; shaking and shivering when asked to defend themselves.... Sebutinde charged like a wounded lion and the police officers scampered whenever she would order for a particular file from a police station.⁶¹⁵

Sebutinde did not spare other senior government officials who appeared before the commission. While cross-examining Minister for Information Basoga Nsadhu over allegations that he had connived with the Police to arrest a Lt. Guweddeko, she is reported to have lost her temper and said:

⁶¹⁴ Swahili for “Citizens.”

⁶¹⁵ Matsiko wa Mucoori, note 613 above.

Order – Basoga, please! You are not going to tell us what you want us to hear. We are the ones asking. Answer our questions!”⁶¹⁶

She interrupted South Western regional police commander, Okwaringa, in the midst of his testimony, and ordered him to sit down because he was “talking rubbish.”⁶¹⁷

While the public was ecstatic about the proceedings, Sebutinde’s outbursts are reported to have caused a concern among some Ministers and members of the legal fraternity. It was reported that lawyer and then Minister for Ethics and Integrity, Mrs. Miria Matembe, as well as Minister for Internal Affairs Ms. Sarah Namusoke Kiyingi, summoned her to discuss her methods of work. Mrs. Matembe admitted having a meeting with Justice Sebutinde, but denied that the purpose of it was to discuss her methods of work. In an anonymous letter to the editor of *The Monitor* newspaper, a police officer criticised her methods of work, saying she had exceeded her terms of reference and was showing partiality by accusing some police officers of crimes and declaring them guilty as though the inquiry were a court of law. This officer felt that Justice Sebutinde was being unfair to the police, painting them all with the same brush and thereby ignoring the historical context of policing in Uganda:

It is my view that such a commission requires a mature approach and it would have served better if the appointing authority had assigned a judge who has lived in this country all through the turbulent years when every organ of the government

⁶¹⁶ Matsiko wa Mucoori, P., (1999) “Judge shuts up Basoga as tempers flare,” *The Monitor*, 25 June 1999, <http://allafrica.co./stories/printable/199906250170.html>, last accessed 13 February 2011.

⁶¹⁷ Ibid.

underwent some form of decay. Justice Sebutinde returned to Uganda in 1996 from Southern Africa where she had spent a considerable number of years getting out of touch with the realities in Uganda.⁶¹⁸

Here again we see Sebutinde's cosmopolitanism as a factor in her chairing of inquiry proceedings, which may have endeared her to the appointing authority but proved to be a sore point with those that she was investigating.

Aftermath and outcome of the Police inquiry

Despite the criticisms of Justice Sebutinde's handling of the inquiry, it is clear that she made into a momentous event for the whole country. Matsiko wa Mucoori observed that:

From a little known High Court Judge, Sebutinde has emerged into a national personality popular across the country. I wouldn't like to bet on it, but believe me, if Sebutinde was to contest with the 1996 presidential election candidates, she would beat them hands down.⁶¹⁹

I would further add that Justice Sebutinde transformed not just herself, but also the entire notion and concept of the role of a judge and the role of a commission of inquiry. She made an impression on the public, the donors and the State as the champion of anti-corruption. She took on a highly symbolic role as the outraged and shocked voice of all those who considered themselves aggrieved by corruption in Uganda's government. Her stance may be regarded as a form of judicial populism or judicial activism, depending on

⁶¹⁸ Anonymous letter to the editor, *The Monitor*, 5 July 1999, at <http://allafrica.com/stories/printable/199907050063.html>, accessed 11 February 2011.

⁶¹⁹ Matsiko wa Mucoori, op. cit.

the observer. In any case, her conduct of the proceedings represented a symbolic moment for the judiciary and the country at large, a moment in which she broke free from the traditional restrained and constrained role of a dignified adjudicator to become the people's voice and vanguard in the struggle against corruption.

By conducting hearings in towns outside the capital, she turned inquiries from an elite phenomenon and gave them a national character and mass appeal. Even though many subsequent inquiries did not conduct hearings all over the country, they were able to attract national attention because of Sebutinde's fame, and by extension, the fame of commissions of inquiry as an institution. Secondly, her style of cross-examination, even though it was regarded by some as offensive, was symbolic because for the first time in the history of the country, people in positions of power were being made to account for their actions in public. It was symbolic of the beginning of a new era of accountability.

At the end of the proceedings, the public eagerly awaited the report but it was another year before it would be published by the government.⁶²⁰ However, it is difficult to tell whether the government would have published it anyway, because excerpts from it were published by *The New Vision* in October 2000 before its release and publication by the government. The Managing Director and Editor-in-Chief of the paper was interrogated by

⁶²⁰ Ochieng, Henry "Sebutinde Police Report finally out," *The New Vision*, 29 May 2001, at <http://allafrica.com/stories/200105290337.html>, accessed 10 February 2011.

the Police over the incident.⁶²¹ When the report was eventually published a few months later, it was in an abridged form, purportedly because there were “certain aspects that might compromise the security of the country.”

The abridged report highlighted that there was widespread evidence of corruption, including the institutionalisation of bribery, false accounting and insider trading. Investigating officers were involved in inducing complainants to drop charges and illegally releasing suspects from custody. Furthermore, the police extorted money from complainants to do their duties; concomitantly suspects could be let off the hook if they could pay a bribe. Files could be “disappeared” for a fee. Bribe sharing was institutionalised to such an extent that those police officers in positions where they interacted with members of the public were expected to pass some of their daily takings to their superiors. The Commission found that impunity was so widespread that the police Criminal Investigations Department (CID) had become a “Mafia-type” organisation where policemen connived with criminals to commit crime and then offered them protection against prosecution.⁶²² Many police officers had amassed enormous amounts of wealth far in excess of their earnings. In addition, the commission was shocked by the brutality of the force, with shooting of suspects on sight, suspects shot in custody and other similar instances of unlawful killings.⁶²³

⁶²¹ Tumusiime, James “New Vision’s Managing Director quizzed over police corruption report,” *The Monitor*, 24 October 2000.

⁶²² *Report of the Commission of Inquiry into the Uganda Police Force*, 1999.

⁶²³ See for example, Matsiko wa Mucoori, “Police brutality shocks Sebutinde,” *The Monitor*, 5 October 1999, available at <http://www.allafrica.com/stories/printable/199910050080.html>, last accessed 11 February 2011.

The inquiry had recommended the reorganisation and re-structuring of the police force, including the dismissal from office and prosecution of a number of senior officers. However, some Senior Police officers such as Mr. Chris Bakiza head of the CID had resigned even before the inquiry concluded proceedings. No prosecutions were ever launched. Some recommendations, particularly those relating to the leadership and management of the force, were implemented with modification. Ironically, some of the officers who had been recommended for disciplinary measures have since been promoted, and more than ten years later, today, allegations of corruption and abuse of office in the Police Force continue to abound.⁶²⁴

The lasting impact of the inquiry was that recommendations to improve the leadership, management and organisation of the Police were used to justify the militarisation of the Police and its infiltration by the army. In April 2001, the Inspector General was relieved of his duties and replaced with General Katumba Wamala. Few eyebrows were raised about this disturbing development because of the degree of corruption unearthed by the Sebutinde Inquiry. Thus, the inquiry was used as a confirmation tool- to confirm in the public's mind that the Police was corrupt to the core and hence justifying and legitimating its militarisation. And while it was expected to be a one-off appointment, General Wamala was subsequently replaced by another army general, Major General Kale

⁶²⁴ See for example, Mubangizi, M. (2009). "CID Bosses not Clean." The Observer. Kampala, Observer Publications Ltd; a newspaper report on corruption in the Criminal Investigations Department.

Kayihura, who is from the same ethnic group as the President. Today, over 40% of Police Officers are from Western Uganda. Hills notes that:

The police remain a core security actor and presidents rarely ignore them. Presidents do not want an effective or efficient police answerable to parliamentary committees or judicial inquiries (some have committed so many crimes that they cannot afford to), but they value the police as a tool for enforcing political decisions, maintaining order, regulating activities and regime representation.⁶²⁵

Hence it is not surprising that President Museveni used the inquiry to consolidate his control over the force. As a former guerrilla leader, of the National Resistance Army (NRM) President Museveni has a natural affinity for the military. It is alleged that in the early days of his regime, he wanted to disband the police force entirely because of its reputation for corruption and indiscipline; and replace it with NRA soldiers who had a reputation for hard work and discipline.⁶²⁶ Furthermore, the Police was used by former Obote's regime to counter rebel activity by Museveni's guerrilla NRA, and thus when the rebels became the leaders they had a negative attitude towards the Police Force. Matters have not been helped by the fact that Police Officers have consistently voted against President Museveni in presidential elections.⁶²⁷

⁶²⁵ Hills, A. (2007). "Police commissioners, presidents and the governance of security." *The Journal of Modern African Studies* 45(03): 403-423

⁶²⁶ Nganda, S. I. (2007). "Police Recruits 40% from the West." *The Weekly Observer*. Kampala.

⁶²⁷ Baker, B. (2004). "Popular Justice and policing from bush war to democracy: Uganda 1981-2004." *International Journal of the Sociology of Law* 32: 333-348

With the “army head successfully grafted onto a police body,”⁶²⁸ few questions were asked when the force began to metamorphose into various paramilitary units such as the Joint Anti-Terrorism Task Force (JATT), Rapid Response Unit, the Black Mamba Squad and the Kibooko squad, a ruthless unit of plain clothes stick wielding officers who have been officially disowned by the Police and army even though they frequently work alongside uniformed riot police officers. The establishment of these units has gone hand in hand with an increasing prevalence of security operatives masquerading as plain clothes policemen, fomenting the lack of accountability by the Police Force.⁶²⁹ These units are staffed by “security operatives” who are hybrid policemen-soldiers-intelligence agents. The para-military units are known for their brutality and are frequently deployed to quell riots and to scatter peaceful demonstrations organised by the opposition.⁶³⁰ It is also important to note that these units have been enabled, facilitated and funded by the USA, UK and Israel as part of the “War on Terror,” confirming the argument in chapter two that this war is one of the factors that undermines the stated intentions of the good governance discourse.⁶³¹

Hence, as observed by the editorial of the Monitor Newspaper, “The police are increasingly being mistaken to be the armed wing of the ruling NRM government.”⁶³²

Indeed, the Police Inquiry was a typical case of using inquiries as a regime consolidation

⁶²⁸ Kagari, M. and E. Edroma (2006). *The Police, the People, the Politics: Police Accountability in Uganda*, Commonwealth Human Rights Initiative

⁶²⁹ Burnett, M. (2009). Brutality in the name of security. *The Independent*. Kampala, Uganda

⁶³⁰ Human Rights Watch (HRW), *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*, available at <http://www.hrw.org/node/82082>, last accessed 31 March 2011.

⁶³¹ Ibid. See also discussion on this issue in chapter 2, at 2.2.3.

⁶³² The Monitor, “Editorial,” July 19, 2009.

tool. The timing of the inquiry shortly after the landmark 1996 Presidential elections was crucial. These elections were the first that had happened in the country since 1981, and they marked a return to democracy and inevitably, to opposition. A number of scholars have argued however that Museveni is intolerant of any form of political opposition, hence providing further insight into his need to control the Police Force.

The Police inquiry and its aftermath is testimony to Museveni and the NRM's politically cunning ability to democratise whilst simultaneously becoming more authoritarian. For the NRM has always sought to project the army, (formerly the rebel National Resistance Movement and now the national armed forces known as the Uganda Peoples' Defence Forces) as a disciplined and pro-people force in contrast to the armies of the previous regimes of Amin and Obote which were widely known for their high-handedness and torture of civilians. By militarising the Police Force, Museveni has managed to retain the good image of the military, whilst anathematising the Police Force not just as a corrupt one, but now also as a repressive one.⁶³³ This strategy enables him to retain the loyalty of the army which remains crucial to his hold on power, as well as ensuring that the Police Force is now ultimately under his control and direction.⁶³⁴ Thus, we see the Police Inquiry as an example of the NRM's usage of inquiries as a political strategy aimed at regime consolidation.

⁶³³ Butagira, T. (2010). "Army is the most trusted public institution," *The Citizen*. Dar es Salaam, Nation Media Group.

⁶³⁴ See Brett, E. (2008). "Neutralising the use of force in Uganda: the role of the military in politics." *The Journal of Modern African Studies* 33(01): 129-152.

5.4.2 The Junk Helicopters Inquiry, 2000

Background

The Commission of Inquiry into the purchase of helicopters by the Uganda Military, popularly known as the “junk helicopters inquiry,” was appointed in November 2000 to:

...inquire into all the circumstances pertaining to the procurement, purchase, acceptance, delivery and payment of MI-24 helicopters for the army, and in particular, to establish whether any loss was occasioned to Government; to establish whether any officer of the UPDF or any other person corruptly received any gratification as an inducement for any act or omission regarding the transaction; to establish whether there was an negligence on the part of any officer of the UPDF, any officer of Government, or any other person in the transaction; and to inquire into any other incidental matter.⁶³⁵

Justice Sebutinde was once again appointed as chair, assisted by Mr. Geoffrey Kiryabwire as the second commissioner and Ms. Maureen Owor as Lead Counsel. Ms. Owor had also served as Lead Counsel for the Police Inquiry, whereas Mr. Kiryabwire (now Justice) was then Managing Director of a local private company, Pan World Insurance.

The background to the inquiry was that the government of Uganda had purchased two Russian-built M1-24 combat helicopters from Belarus at the cost of \$6 million in 1998, largely as the response to the Lord’s Resistance Army (LRA) guerrilla war that had been ravaging northern Uganda since 1986. The helicopter gun-ships were considered ideal for

⁶³⁵ Terms of Reference, *The Commission of Inquiry (purchase of Military Helicopters) Notice*, 2000, Legal Notice No. 16 of 2000.

firing at escaping LRA guerrillas who would have been difficult to track on the ground in the expanse of northern Uganda's Savannah grasslands.⁶³⁶ However, the air force pilots later refused to fly them on the ground that they were not airworthy. The helicopters had been supplied by a company known as Consolidated Sales Corporation (CSC), owned by entrepreneur Mr. Emmanuel Katto. The media picked up the story from sources at the air force base, thus creating a scandal at a crucial time when elections were going to be held in 2001. Thus, the President appointed the inquiry to quell the rising public disquiet about the huge loss of tax-payers' money.⁶³⁷

Proceedings

Riding on the wave of publicity that had been generated by the Police Inquiry, the Junk helicopters inquiry was equally sensational and attracted daily newspaper headlines.

Testimony after testimony showed that the whole transaction was fraught with irregularities and that there were no clear procurement guidelines in the Ministry of Defence. According to one of the former Commissioners, the practice in the Ministry of Defence was "procurement by executive directive" in disregard of the formal administrative procedures.⁶³⁸

Notably, the company that supplied the helicopters, Consolidated Sales, was recommended to General Salim Saleh by another businessman with links to the first

⁶³⁶ Personal interview, with former Commissioner, 15 July 2009.

⁶³⁷ Ibid.

⁶³⁸ Personal Interview, July 2009.

family, Mr. Kwame Ruyondo. Gen. Salim Saleh, (also known as Caleb Akandwanaho) is the President's younger brother and was formerly a Presidential Advisor on Defence but had resigned following the revelations of his involvement in the irregular privatisation of Uganda Commercial Bank and Uganda Grain Millers. During the inquiry, it emerged that Gen. Saleh used his influence with the President to ensure that Consolidated Sales was awarded the deal, and the President personally wrote to the Ministry of Defence issuing a directive seconding the said company to supply the helicopters.⁶³⁹

Justice Sebutinde's approach to cross-examination in this inquiry was much calmer than the one she had adopted with the Police Force. There were no media reports of her losing her temper or causing Ministry of Defence officials to "wither" in her presence.

Nevertheless, the high profile of the people implicated, such as Gen. Salim Saleh and President Museveni himself, may explain why the inquiry monopolised the news headlines during its public hearings, which lasted from April – June 2001.

The defining moment of the inquiry and its most significant finding was that Gen. Saleh, with the President's knowledge and acquiescence, was offered a commission worth US\$ 800,000 from CSC as part of the deal. Gen. Saleh, however, testified before the

⁶³⁹ Matsiko, w. M. (2001a). "Saleh got junk copter suppliers, says Mbonye." *The Monitor*. Kampala, Monitor Publications. See also; Matsiko, w. M. (2001b). "Muntu says Museveni okayed copter contract." *The Monitor*. Kampala, Monitor Publications Ltd.

Commission that he had never received the commission.⁶⁴⁰ The President also testified before the Commission and confirmed that he was indeed aware that Gen. Saleh had been offered a commission, and that he had told him to accept it but use it to redevelop northern Uganda which had been ravaged by civil war, and not to keep it for personal use. His testimony was broadcast on national television and reported verbatim by the two main dailies, *The New Vision* and *The Monitor*. He justified his involvement in the helicopter deal thus:

The reason why I invited the commission of inquiry into helicopters to talk to them is I want to sort out 5 punts. It's my duty to help not only this commission but the country to understand what is going on in this important institution known as the army. Some of the witnesses have created the impression that it's out of order for the president to involve himself in army affairs. From what I was reading in the papers- that President Museveni is interfering in army matters. That I was interfering in army matters by advising the army to buy helicopters to defend our country. That I should not have done it. That I should have left it to I don't know whom. That one I do not accept and I will not accept it as long as I am president of Uganda because that's one of my primary jobs. I will guide this army until it's a mature army....⁶⁴¹

The president's testimony was an admission of his involvement and interference in the procurement process. However, he justified his actions as being in the best interests of the

⁶⁴⁰ Matsiko, w. M. (2001c). "Saleh admits Shs 1.3bn bribe in copter deal." *The Monitor*. Kampala, Monitor Publications Ltd. Despite Saleh's denial that he never received any money, many members of the Public to this day believe that he received a huge bribe in the helicopter deal, as I will show later on in chapter 6. This could be due to the manner in which the media reported the matter as shown by the headline.

⁶⁴¹ Matsiko wa Mucoori, "Chopper Contract Weak – Museveni," *The Monitor*, Thursday 7 June 2001.

army and of the country. He insisted that his actions could not be interpreted as corrupt.

Similarly, he later defended his younger brother Salim Saleh:

I have seen people saying that Saleh was not put in prison. Saleh could not be put in prison by anybody who was serious... he is the one who reported to me that he was offered a bribe. I then reported to the Minister of State Kavuma and Saleh cooperated fully... We are the ones who are fighting corruption in Uganda, not anybody else and I cannot tolerate corruption. It is the Movement which will stop corruption, not these nomadic commentators.⁶⁴²

The President's attitude to this matter belied his tolerant attitude towards corruption, as already discussed in chapter 3. In spite of the glaring facts of his influence over the procurement process, he explained away his actions with ease. At the same time, he made much of the fact that he was a different kind of leader who was prepared to provide accountability for his actions before a commission of inquiry, even though it was he and not the commissioners who controlled the proceedings. The President's exculpation of his brother and justification of his actions makes one wonder what could have been the political purpose behind the appointment of the inquiry. I will return to this issue shortly.

Aftermath and outcome

In its report and recommendations, as revealed by journalist Mwenda who leaked excerpts of it in *The Monitor*, the Commission of Inquiry recommended that Emma Katto be prosecuted for offering a bribe and Salim Saleh for abuse of office. The Commission of Inquiry pinned the blame for the botched deal on Saleh, whom it says "exhibited the

⁶⁴² Atuhaire, A.B. & S. Kasyate (2005), "Museveni defends General Saleh on Graft," *The Monitor*, 29 October 2005, at <http://allafrica.com/stories/printable/200510280695.html>, last accessed 12 February 2011.

highest form of greed, self interest and corruption, the type that is proscribed under the Prevention of Corruption Act 1970, Section 1(a).”⁶⁴³ It further said that Saleh’s confession of the offer of a bribe “was not impressive or even exculpatory because it was not given voluntarily. It came after the president had complained, and was too late after the contract had been signed.” The report observed that “The inducements offered to Ruyondo and Saleh jeopardized transparency, eliminated healthy competition and guaranteed contractual terms that favoured the seller rather than the buyer... both gentlemen [Saleh and Ruyondo] acting under the promise of inducements did all they could to ensure that Katto was awarded the contract.”⁶⁴⁴

The report criticized President Museveni for advising Saleh to take a bribe from CSC, the suppliers of the helicopters. Although Saleh called it a commission, the report insisted that it was a bribe: “Whereas we appreciate the need at the time for a speedy delivery of the helicopters,” the report says, “we feel that the president’s advice to Saleh, however well intended could easily be misunderstood by Ugandans as a double standard. Saleh enjoyed a special relationship with the president as fraternal brothers. Under such circumstances, the president’s advice can be interpreted as a means of protecting or exculpating his brother.” The report was very critical of President Yoweri Museveni’s role in the purchase

⁶⁴³ Section 1(a) of the 1970 Prevention of Corruption Act, Cap. 121 Laws of Uganda (now superceded by the Anti-Corruption Act) provided: “Any person who shall, by himself or herself or by or in conjunction with any other person— corruptly solicit or receive, or agree to receive for himself or herself, or for any other person; or corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to, or reward for, or otherwise on account of any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed, in which that public body is concerned, commits an offence.”

⁶⁴⁴ Mwenda, A. M. (2002). “Sebutinde Pins Katto, Saleh, over Choppers.” *The Monitor*. Kampala, Monitor Publications

of the helicopters specifically, and in the purchase of all classified military equipment generally.⁶⁴⁵

Dr. Kizza Besigye, the logistician in the Ministry of Defence at the time, who was at the time of the inquiry running for President against Museveni, was exculpated. Mwenda reported that:

On the basis of this, the report clears Besigye who was army Chief of Logistics and Engineering. He travelled to Belarus to do pre-shipment inspection on the helicopters. The report also clears Amama Mbabazi, then minister of state for Defence and Dr. Ben Mbonye, then Permanent Secretary and accounting officer. “These officials understood their role as being limited to the speedy implementation of the president’s directive,” the report says. “Considering the established practice regarding classified procurement in the MOD, and the tone of the presidential directive, the commission is of the view that the failure by these officials to vet Consolidated Sales Corporation (CSC), although inexcusable was understandable in the circumstances.”⁶⁴⁶

Justice Sebutinde’s critical report was hushed up by the government, who refused to publish its contents despite the fact that the cat had already been let out of the bag during the public hearings. Moreover, it was not until five years later in 2005 that charges were brought in respect of the scandal. Although the inquiry had recommended a number of people for prosecution, including Mr. Ruyondo, who introduced Mr. Katto and CSC to Gen. Saleh, as well as Gen. Saleh for abuse of office for his role in the purchase, only Mr.

⁶⁴⁵ Ibid.

⁶⁴⁶ Ibid.

Katto, the director of the company that supplied the helicopters, was prosecuted for corruption under the 1970 Prevention of Corruption Act. Instead, Mr. Ruyondo was called as the first prosecution witness and Salim Saleh was called as the second prosecution witness. Given the turnaround from the recommendations, it was not surprising that the prosecution was not successful, and that the DPP did not appeal against the judgement. A close scrutiny of the facts shows that the available evidence could never sustain a criminal charge of bribery, as revealed in Magistrate Margaret Tibulya's Judgement:

The state evidence was that in 1996/97, PW1 (Mr. Ruyondo) introduced the accused to Lt. Gen. Saleh (PW2) for purposes of helping him secure a contract with the Ministry of Defence.

PW2 was then in the Reserve Force. He had by then formed a company M/S Caleb International, a marketing company.

The accused sought PW2's company's assistance in marketing his services to the Ministry of Defence.

PW2 accepted to do so for a Commission. *This commission has never been paid to PW2. He had acted as a private businessman in marketing the accused's services to the Ministry of Defence. By then, PW2 was entitled to do private business.* (My emphasis).⁶⁴⁷

Thus we see the facts of the case being framed in such a way as to emphasise Gen. Salim Saleh's role in the army to be merely that of a Reserve Soldier and his main occupation is reiterated as a businessman and not a member of the Armed Forces. The offer of an

⁶⁴⁷ *Uganda versus Emmanuel Katto* Criminal Case No. 0086 of 2005 (unreported), Chief Magistrates' Court of Buganda Road, Kampala.

inducement by Mr. Katto is framed as a legitimate commission and not as a bribe.

Accordingly, it was not surprising when the Chief Magistrate concluded:

The State's own evidence is that no felonious giving, promising or offering of any gratification as an inducement ever took place.

The star witness (PW2) was clear that what was negotiated was a commission, which according to him was quite proper since he was not an officer or a servant of a public body at that time. PW2 was running a marketing company M/S Caleb International, which the accused approached to market his services for a commission.

This evidence renders the corruption charge irrelevant. There is no evidence of corruption in circumstances where two businessmen agree to do business, or to give each other a business opportunity as was the case... I find no merit in the charges. I acquit the accused...

From the above, it would not be farfetched to infer that the purpose of the inquiry was to try to get rid of political opponent Dr. Kizza Besigye, who had a short while before the inquiry, announced that he would be challenging Mr. Museveni for the presidency in the 2001 elections. This view is lent credence by the fact that shortly before public hearings were due to start, *The New Vision*, a government owned newspaper, ran a story suggesting that the inquiry would be seeking to question Dr. Besigye for his involvement in the helicopter purchase. Dr. Besigye, Retired Colonel, was a "historical" member of the NRM and one of the original 27 who started out with Museveni in his guerrilla war. He was formerly a Logistician in the Ministry of Defence and had at the time fallen out with the NRM Party on grounds that the party had diverted from its original ideals and become intolerant. Shortly afterwards, he announced his candidature for the presidency. The *New*

Vision article was regarded by the inquiry as an attempt to politicise the inquiry, and suggested that Dr. Besigye was to be held responsible for the scandal. The Monitor newspaper's verbatim recording of the inquiry chair's opening remarks throws light on the matter:⁶⁴⁸

Justice Julia Sebutinde: I welcome you to the first sitting of the commission of inquiry into the purchase of military helicopters... This concerns the members of the press. There is a tendency for the press to politicise this inquiry. It's wrong; this inquiry is expected by law to be fair. If it starts on a wrong ground that this commission is against or is in favour of so and so, it's very bad. This is very important. Please, I ask you to refrain from politicising this inquiry. I want to particularly refer to an article that appeared in the Sunday Vision. This article quotes me as having been interviewed by this reporter. It's not true. No one interviewed me. Don't cook up stories. There have already been two inquiries in this inquiry which were held in camera. It is in your (the media) interest that this part of the inquiry is public. If you continue twisting the truth, I will not hesitate to turn this inquiry to be held in camera.

The timing of the inquiry (2001), whereas the transaction in question had occurred in 1996, also points to the fact that there was more to it than met the eye. Moreover, there were other procurement scandals that had occurred in the Ministry of Defence, for which no process of accountability was ever initiated, such as army uniforms that were several sizes too small, dilapidated tanks, and expired food rations.⁶⁴⁹ This lends credence to the

⁶⁴⁸ Matsiko wa Mucoori, "Day one in the Chopper Probe," *The Monitor*, Wednesday April 19, 2001. I was unable to dig up the original story in the Sunday Vision of 16 April 2001, but former Commissioners confirmed in my interviews with them that the article said the inquiry would be looking to interview Besigye for his role.

⁶⁴⁹ For more on these scandals, see Tangri, R. and A. Mwenda (2003). "Military corruption & Ugandan politics since the late 1990s." *Review of African Political Economy* 30(98): 539-552.

claim that the inquiry's main aim was to tarnish Dr. Besigye's name ahead of the 2001 elections.

The government's *mala fides* in appointing the inquiry can be seen in the failure to prosecute Saleh and Ruyondo as recommended by the report and its unabashed attempts to cover up the truth by not publishing the report. It is therefore not surprising that the report was a "tightly guarded secret," as Minister Amama Mbazazi said on radio⁶⁵⁰ and that during my research, an official from the Ministry of Defence told me that the report "cannot be found anywhere and even the computers which were used by the Commission were taken."⁶⁵¹ There is no official version available either in the Ministry of Justice or at the Government Printers. A former Commissioner who is a High Court Judge and had a copy of the report in his chambers was also unable to find it when this researcher asked for his assistance – it "disappeared mysteriously" from his chambers.

5.4.3 The Uganda Revenue Authority (URA) Inquiry 2002

Background

The reform and reorganisation of taxation administration in developing countries was part of the macro-economic reform package promoted by IFIs such as the World Bank and the IMF. In Uganda, this had started in 1991 by delinking revenue collection and tax

⁶⁵⁰ "Andrew Mwenda Live" radio talk show programme on K FM, 93.3 FM hosting Amama Mbazazi, Minister for Security, 23 September 2008.

⁶⁵¹ Personal Interview with Ministry of Defence Official, July 2009.

administration from the mainstream ministry of finance and establishing the Uganda Revenue Authority as a semi-autonomous statutory authority under the Ministry of Finance.⁶⁵² The URA was both then and now, regarded as one of the most corrupt government institutions.⁶⁵³ In announcing the inquiry, then Finance Minister, Mr. Gerald Sendaula, said:

URA officials are alleged to have a house after 6 months in office. Those allegations should be substantiated. I could not close my ears to the outcry. I asked URA whether the allegations were true and naturally they could not admit to committing an offence, so we felt the need to clean up and improve on revenue collection.⁶⁵⁴

Although Sendaula did not admit it at the press conference, the World Bank and IMF had a hand in the appointment of the inquiry and had specifically requested for Justice Sebutinde to chair it, given her track record with the Police and Junk Helicopter inquiries. Their interest was to use the inquiry as a launch pad for restructuring the organisation, which it was hoped would subsequently raise revenue collection from about 10% to at least 15% of GDP in line with the Sub-Saharan Africa average prevailing at that time.⁶⁵⁵ Accordingly, the commission of inquiry into allegations of corruption in Uganda Revenue Authority was appointed in 2002 to:

Generally investigate allegations of corruption in the Uganda Revenue Authority;

⁶⁵² The Uganda Revenue Authority Act 1991, Cap. 196 Laws of Uganda; section 2.

⁶⁵³ See *Uganda National Integrity Survey Reports*, 1998, 2003 and 2008. URA has however, reported a slight improvement since the post-inquiry restructuring, with only 31% of respondents regarding it as the least honest public institution in 2008, whereas 77.4% regarded it thus in 2003 at the height of the inquiry. See 2008 report, page xvii.

⁶⁵⁴ Juuko, S. "Sebutinde to probe URA," *The New Vision*, 15 March 2002.

⁶⁵⁵ Interviews with former commissioners, July 2009. Tax revenue currently stands at about 13% of GDP. See <http://www.tradingeconomics.com/uganda/tax-revenue-percent-of-gdp-wb-data.html>, last accessed 15 February 2011.

To investigate specific allegations of corruption made against individual officers and to establish inter alia –

- (i) Those employees of the authority who in the course of their employment, had acquired significant wealth that cannot be shown to have been received from legitimate means;
- (ii) Those employees who have corruptly received gratification or inducement in the course of their employment in Uganda Revenue Authority;

To inquire into any other appropriate matter incidental or relevant to the foregoing;

To make recommendations concerning URA employees who should be dismissed from service or who should be subjected to criminal prosecution or both;⁶⁵⁶

To make recommendations for improving the efficiency and effectiveness of the Uganda Revenue Authority.

Proceedings

Public hearings begun in June 2002, with a major focus on verifying the assets of URA employees. For this, the commission of inquiry was reliant upon the public to volunteer information on the assets of URA employees, which information could then be verified by the Commissions' investigators and verified against the URA employees' asset declaration forms. However, when information was not forthcoming, the inquiry made an appeal to the public and decided to allow anonymous complaints and memoranda.⁶⁵⁷ The

⁶⁵⁶ *The Commission of Inquiry into Allegations of Corruption in the Uganda Revenue Authority*, Legal Notice No. 3 of 2002.

⁶⁵⁷ See Mulumba, BM, "Revenue probe accepts anonymous letters," *The Monitor*, 23 September 2002.

commission also considered allegations of tax evasion by a few companies, although these did not generate as much media attention as the asset verification hearings. This was due to the fact that from the start of the inquiry, there had been a keen interest in URA employees' illicit enrichment.

Unlike the Junk Helicopters inquiry, Justice Sebutinde's approach to cross examination in this inquiry was on a number of occasions, confrontational; re-echoing her handling of the Police Inquiry. For example, on one occasion, she said to some URA officials:

All of you belong in jail. If I had anything to do with it, I would throw all of you in jail and begin afresh...Our suspicions have been confirmed. There is laxity, incompetence and most probably fraud. You have been abetting tax evasion.⁶⁵⁸

On another occasion, when a member of the Internal Audit and Tax Investigation department Mr. Kyeyune was testifying before the Commission, she said to him, "Isn't it a pity that you were investigating fraud and you helped the enemy? Don't you think you are going to Luzira?... All you in the audit team belong in Luzira."⁶⁵⁹

Some months into the inquiry, matters relating to the finances of the inquiry attracted press attention when a dispute between Justice Sebutinde and Ms. Annebrit Aslund, the Commissioner General of URA, spilled over into the public domain. The dispute concerned the taxation of Justice Sebutinde's honorarium of nine million Uganda

⁶⁵⁸ See Governance World Watch, 31 October 2002, "Probe shows Uganda Tax Authority Deeply Corrupt," at <http://unpan1.un.org/intrdoc/groups/public/documents/un/unpan014267.htm#PFMAF01>. Last accessed 23 February 2011.

⁶⁵⁹ Ssali, H.H., "Sebutinde Rejects Ex-URA Chief's Defence," *The Monitor*, 29 October 2002, at <http://allafrica.com/stories/200210300479.html>, last accessed 23 February 2011. Note Luzira is the location and name of Uganda's only Maximum Security Prison.

shillings. According the 1995 Constitution, judges' earnings and emoluments are tax exempt. Sebutinde argued that her honorarium as chair was therefore exempt from taxation. The URA requested for legal advice from the Solicitor General, who advised that the honorarium was subject to taxation. "The law is clear. A judge's salary is not supposed to be taxed. However, any other earnings are subject to taxation." The Solicitor General argued that the Commissions of Inquiry Act did not specify that a Judge should be chair of the inquiry. Justice Sebutinde's chairing of the inquiry was therefore not in her capacity as a judge, but as a person of good public standing. Sebutinde subsequently decided to appeal to the High Court against the taxation decision in accordance with the Income Tax Act. She averred that the decision had been motivated by animosity, an allegation which the Authority denied. The High Court referred the matter to the Constitutional Court for interpretation, and it would be over a year before judgement was made.⁶⁶⁰

The Constitutional Court agreed with the Solicitor General that under the Commissions of Inquiry Act, a Commission of Inquiry is not a "Court" and neither does it exercise judicial power:

In Uganda, commissions of inquiry do not conduct their business as judicial tribunals. Their decisions are merely recommendations and advisory. They do not follow and are not bound by rules of evidence and procedure. Their procedures are not conducted as nearly as possible to those of courts of justice. The method of appointing their principal officers are quite different and whereas the commissioners are not independent, that is the hallmark of the courts of justice.

⁶⁶⁰ *Julia Sebutinde v. the Attorney General of Uganda*, Constitutional Reference No. 5 of 2005.

Whereas a judicial inquiry is manned by a judicial officer or officers and their decisions are binding, there is no requirement that the chairperson or any of the commissioners be a judicial officer.

The work undertaken by Justice Sebutinde in chairing the inquiry therefore did not fall within the ambit of Article 128 of the Constitution of Uganda which exempts judges' earnings from taxation.

This was a significant judgment that explained the legal role and purpose of commissions of inquiry in Uganda. It highlighted that their purpose is merely advisory, and therefore, indirectly emphasised that it is a misunderstanding to expect anything much to come out of them. The Constitutional Court also pointed out the weaknesses of inquiry procedure, especially the sensationalist nature of the evidence which might not stand under legal scrutiny. In effect, this judgment threw cold water over the high status that commissions of inquiry had acquired in Ugandan society up to this point in time.

Aftermath and outcome of the URA Inquiry

It should be noted that the above judgment was made at least one year after public hearings had ended in March 2003, and was a reflection of several factors that befell the inquiry in the aftermath of the public hearings. Despite the dispute between Justice Sebutinde and the URA, the public eagerly awaited the report, which was finally submitted to the Minister of Finance in August 2004.

Perhaps the delay in submitting the report should have sent alarm signals that all was not well with the inquiry. The country was nevertheless taken by surprise when it came to light that two of Justice Sebutinde's fellow commissioners, Mr. James Kahooza, former and long serving Auditor General, and Ms. Fawn Cousens, an expatriate Accountant and member of the Tax Appeals Tribunal, had not signed the final report. They called a news conference and distanced themselves from the report. They argued that the report that Justice Sebutinde had submitted to the Finance Minister and the President could not be regarded as a report of the inquiry because they had not signed it; indeed, they did not even know that the report had been finalised and was being formally presented! They said that the final report had been compiled by the Chair Justice Sebutinde and Secretary Mr. (now Justice) Geoffrey Kiryabwire without their input, and that the comments they had made on the draft had been disregarded. They accused Justice Sebutinde of sidelining them from the report-writing process and treated as assistant commissioners instead of full commissioners in their own right.⁶⁶¹

Ms. Cousens and Mr. Kahooza questioned the contents of the report, the draft of which they had read, in which the inquiry attacked certain URA officials on matters that were not considered by the commission. For example, Commissioner General Annebrit Aslund was accused of showing contempt, animosity and resistance towards the Commission. Ms. Cousens and Mr. Kahooza maintained that this finding was based on the dispute regarding

⁶⁶¹ Kalinaki, D., and Mwanguhya CM, "Colleagues Reject Sebutinde Report," *The Monitor*, 19 February 2004.

the taxation of the Chair's honoraria, which was not in any way connected to the inquiry's terms of reference.⁶⁶²

However, Justice Sebutinde accused the two of "vanishing" from the Commission, claiming that they had not reported for work since an incident in which Justice Sebutinde's residence was attacked by gunmen.⁶⁶³ She accused them of dishonesty and said they should have written a minority report if they disagreed with her findings. Soon after this, an anonymous letter titled "Are all of you objective in your inquiry or do some of you have something to protect?" appeared in the press. The letter alleged that Mr. Kahooza too, had a conflict of interest with the URA, as his wife's company Kaka Catering Services, had been supplying food to URA since 1996. By 2002, it had supplied food worth 300 million Uganda shillings to the authority and yet it was not paying taxes. It was also alleged that Mr. Kahooza's son, Mr. Anthony Kagaba, was an Assistant Revenue Officer in the URA, and that he had obtained the job in 1994 upon the recommendation of Mr. Kahooza, then the Auditor General, without doing an interview.⁶⁶⁴ Ethics and Integrity Minister, Mr. Timothy Lwanga, then entered the fray, declaring that Mr. Kahooza had acted unethically by not declaring that his family supplied food to the URA. Mr. Kahooza defended himself saying the issue had never come up before the

⁶⁶² Ibid.

⁶⁶³ This incident is discussed above at p. 202.

⁶⁶⁴ Harera, P., D. Kalinaki et al, "URA letter names Kahoza," *The Monitor*, 20 February 2004.

Commission, and that he was merely being framed by Sebutinde to cover up her own misdeeds.⁶⁶⁵

In the ensuing battle, fought in the press, the Attorney General Francis Ayume advised the government not to act on the report, saying it was invalid because it had not been signed by two of the three commissioners. Justice Sebutinde retorted:

With due respect, the Attorney General should not confuse the Cabinet and the Public. The Commissions of Inquiry Act does not say that it is a requirement that the members must sign. The Secretary and myself signed the cover letter... By the way, he is misleading the public. When he says the report is not legally binding, he is saying the obvious. Reports of commissions of inquiry are not legally binding. Their contents are at best, advisory. Their evidence only offers clues for further investigation. There is no basis for a challenge in Court.⁶⁶⁶

Justice Sebutinde was referring the press reports that Ms. Annebrit Aslund had applied to the High Court to have the report quashed by an order of certiorari, seeking to have the report quashed and expunged from the public records of Uganda. The grounds for her application were that the process of compiling the report was flawed since it did not involve all the Commissioners, and that in the report, Justice Sebutinde made a baseless and biased finding that she was incompetent to head a big financial institution such as the URA. In defending the report, the Attorney General argued that the High Court had no jurisdiction to grant the said order, because it had no powers of judicial review over a

⁶⁶⁵ Wasike, A. “‘Kahoza had URA Interests,’ says Minister,” *The New Vision*, 20 February 2004

⁶⁶⁶ Wasike, A, “Government to use Sebutinde Report to fight graft in URA,” *The New Vision*, 11 March 2004.

tribunal constituted by a judge. However, Ms. Aslund's lawyers maintained that under the Uganda Commissions of Inquiry Act, a commission of inquiry was not in any way referred to as a judicial tribunal, but was merely a commission of inquiry. In his ruling, Justice Katutsi agreed with counsel for the applicant that although the Act gave the Commission the powers of the High Court to call for the attendance of witnesses and the production of documents, it did not equate the inquiry to the High Court or specify that any of the commissioners should be a judge. He held that:

It was clear that the report had jettisoned impartiality to the wind.... the issues of taxation and incompetence of the Commissioner General of the URA were outside the terms of the commission. These were ultra vires. All in all there is nothing good to speak about this report. It was not a report of the commission. It was in complete breach of Legal Notice No. 3 of 2002 and a nullity ab initio.... I have no slightest hesitation (sic) in declaring the Sebutinde Report submitted to the Minister of Finance... not a report of the Commission established by Legal Notice No. 3 of 2002 to inquire into allegations of corruption in URA and a nullity in law.⁶⁶⁷

That was supposedly the final nail in the coffin of the URA inquiry report. Yet, the verbal exchanges continued. Talking to journalists about the judgement, Justice Sebutinde said:

My learned brother seems to be re-writing the law as we know it. According to the jurisprudence of judicial review, a judicial officer is not allowed to review the work of another judicial officer at the same rank. We all have equal discretion and the judge did not have a right to review my work and this is very clear in the Judicature Act. I have critically looked at this judgment but I have failed to understand it. But my brother is entitled to his opinion. ... Trashing this report by the High Court is as

⁶⁶⁷ *Annebritt Aslund v. The Attorney General*, Miscellaneous Cause No. 60 of 2004 (unreported). Ruling of Hon Justice John Bosco Katutsi.

good as the government shelving the previous Commissions of Inquiry I have handled... they all have no effect. This is not a question of my integrity as a judge or Sebutinde's image. Sebutinde is just a small insignificant aspect in this whole saga. This is about Uganda as a country and how it is managing its granary, the URA. He (Justice Katutsi) should have ruled that the 1% touching Aslund should be disregarded, but why do you have to cancel the 99% which the applicant did not attack?⁶⁶⁸

This commission of inquiry drew attention to the problems and pitfalls of the institution of the commission of inquiry operating in a context such as Uganda. First of all, this was the first inquiry to draw attention to the enormous expense of holding a commission of inquiry, as a result of the taxation dispute between Justice Sebutinde and the URA regarding her honorarium. By drawing attention to the fact that she was earning 9 million shillings a month, twice her normal salary as a judge and way above the average salary of civil servant, the Chair ignited the journalists' curiosity, who were then able to establish the total cost of the inquiry, estimated to have cost over 1 billion Uganda shillings, or over 1 million US dollars for its duration of one year. This raised questions about the costs versus benefit of inquiries, many of which do not have their reports published or recommendations implemented.

Secondly, the inquiry exposed the inadequacy of the Commissions of Inquiry Act. Transplanted to Uganda by the British in 1914, the Act has not undergone any changes to bring it into line with the times. For example, the discretion of the executive to publish or

⁶⁶⁸ Muyita, S. "Sebutinde attacks judge over report," *The Monitor*, 18 August 2004.

not publish the report is a reflection of colonial arrogance and is against the right to freedom of information. Furthermore, the lack of clarity on the *modus operandi* of commissions of inquiry is a glaring loophole, through which the URA inquiry fell when its commissioners could not agree on the findings and recommendations. These problems are a hangover from the royal commissions of inquiry in Britain, which were established by royal prerogative and exercised as it were, the sovereign powers of the Crown. Such powers have no place in a republic such as Uganda, as they merely present opportunities for authoritarian leaders to exercise their tyranny. Moreover, Britain itself has since moved on, with the Tribunals of Inquiry Act 1921, as recently amended by the Inquiries Act 2005. The Act contains detailed provisions on the membership of the inquiry, its proceedings and its reporting requirements.⁶⁶⁹ Sierra Leone too, has enacted a constitutional provision governing inquiries that democratises the inquiry process.⁶⁷⁰ Article 147 provides that the President may appoint an inquiry by Constitutional Instrument, if the Cabinet advises him to do so or if the Parliament passes a resolution that an inquiry is necessary to resolve a matter of public importance. Article 149 gives the President discretion to publish or not to publish the report, but reasons for non-publication must be furnished. This is a provision that maintains the unique status of inquiries as *ad hoc* investigatory devices, yet respects the people's right to information by obliging the President to furnish reasons for non-publication. Therefore, the debacle of the URA

⁶⁶⁹ The Inquiries Act 2005, Ch. 12.

⁶⁷⁰ Act No. 6 of 1991, available at <http://www.sierra-leone.org/Laws/constitution1991.pdf>, last accessed 23 February 2011.

inquiry and report shows that it is time the Uganda Act was reformed to bring it in line with modern democratic thinking and practice.

The URA inquiry also highlighted the dangers of using judges in political inquiries, as it clearly put Justice Sebutinde's judicial integrity on the line. Also, the nullification of the report by the High Court showed the inconsistencies of the Ugandan State, characterised by the ability to circumvent the law when politically convenient as discussed in chapter 3, as well as the possibility that the rule of law can be effectively enforced when necessary.

The fiasco also exposed the double standards of the donor community in their dealings with Uganda. They championed the rule of law, but did not hide their displeasure when the High Court nullified the URA inquiry report, in which they had invested more than 1 million USD. Following the ruling of Justice Katutsi, the Danish government threatened to withhold a grant of US \$ 2 million to URA unless the government made public the report and implemented its recommendations. According to a press report on the reaction by DANIDA in which unfortunately, no one was quoted directly, it was implied that the government had connived with the judiciary to quash the report.⁶⁷¹ Matters were not helped by the fact that President Museveni was uncharacteristically silent about the developments in the URA inquiry.

⁶⁷¹ "Denmark right to push government on wall," *The Monitor*, Editorial, 29 August 2004.

What then, were the political implications of the URA inquiry? Despite the nullification of the report, restructuring of the URA went ahead, and many of the officials who had appeared before the commission of inquiry did not have their contracts renewed. On the other hand, it was of significance that Mrs. Allen Kagina, a Psychology graduate, who had formerly been a Commissioner in charge of Customs, was promoted to become the Commissioner-General of the URA after Swedish-born Annebrit Aslund's contract expired. It was alleged in the Ugandan media that the government had always been unhappy with Ms. Annebrit Aslund's appointment to head the URA.⁶⁷² She was regarded as a donor imposition whereas the government would have preferred to have one of their own heading this very important body. Mrs. Kagina is from the same village as the President, Nyabushozi, which leaves ample room for speculation as to why she was the government's choice to head the URA.

All in all, the legacy of this inquiry is not the corruption that was unearthed in URA. The subject matter of the inquiry was greatly over-shadowed by the ensuing dispute between Justice Sebutinde and URA boss Ms. Aslund, the disagreements between the Commissioners, the court cases which resulted in the nullification of the report by the High Court.

⁶⁷² See "Did Sebutinde step into URA trap?" *The Monitor*, 22 August 2004

5.4.4. The Global Fund Inquiry 2005

Background to the inquiry

The Global Fund (GF) to fight HIV/AIDs, Tuberculosis (TB) and Malaria is an international public/private partnership established in 2002 following the UN General Assembly Special Session on HIV/AIDS that took place in June 2001. The GF is dedicated to attracting and disbursing additional funds to fight the three named diseases. Its headquarters and secretariat are in Geneva, Switzerland, but it works with governments, civil society, the private sector and affected communities in various countries including Uganda to supplement existing efforts dealing with HIV/AIDS, TB and Malaria by providing financial resources.

Justice James Ogoola, Principal Judge, was appointed to Chair the Inquiry. He was to be assisted by Margaret Mungerera, a prominent psychiatrist who was then the chair of Uganda Medical Association, and Mr. Emmanuel Mutebile, the Governor of the Bank of Uganda.

The main reason for the appointment of the Commission of Inquiry into the Alleged Mismanagement of the GF was the suspension in August 2005 of all the five Global Fund grants to Uganda and the disbandment of the administrative unit (Project Management Unit: “PMU”) in the Ministry of Health (MOH) which had been managing the operations and activities of the Global Fund in Uganda. The GF Secretariat reiterated that the suspension would continue until the Government of Uganda (through its Auditor General)

had carried out a satisfactory audit of the finances and activities of GF Uganda and had put into place a caretaker mechanism to attend to the life - threatening and strategic needs of the Project pending comprehensive resolution of the underlying issues.

This was not only the first time the GF had taken such a decision worldwide, it was also the first time that donor conditionality was being so strictly enforced in Uganda. Uganda had for long not measured up to many of the good governance indicators that donors upheld; being a de-facto one-party state under the “Movement” system of government and also due to increasing evidence of rampant corruption. And yet, donors had displayed an unprecedented level of patience with Uganda, hailing it as an economic success story. As I argued in Chapter 2, this turning a blind eye to corruption in Uganda was not only because of it being a success story, but also because of its geo-strategic importance. However, Museveni had put his special relationship with donors especially the US in jeopardy by unilaterally invading the Congo, which led to a cooling of the hitherto warm relationship he had enjoyed with them.⁶⁷³

In addition, donors had expressed their displeasure over a constitutional amendment passed in June 2005 that removed presidential term limits, thereby allowing Museveni to run for a third term, and indeed to embark on what was seen by many as “President-for-Life” project. The British High Commission was particularly unsatisfied with the prevailing situation, prompting Mr. Nikesh Mehta (the Second Secretary on Political

⁶⁷³ Lynch, E. (2007). "Uganda and US Foreign Policy." *Orbis* 50(1): 103-116. See discussion at chapter 2, p. 55.

Issues at the British Embassy in Kampala) to issue a statement withholding up to £5m (\$10m) of funding to Uganda. This was followed by a further warning to cut aid by the Organization for Economic Cooperation and Development (OECD) countries, which comprise most of Uganda's top donors. In response, the government warned foreign diplomats accredited to Uganda to stop making public statements about political matters.⁶⁷⁴ Thus, due to a number of complex reasons, the hitherto rosy relationship between the donors and the NRM government was on the rocks.

According to the GF Secretariat, the decision to suspend the grants to Uganda arose from the findings and recommendations of an August 2005 report by PricewaterhouseCoopers (PwC). PwC was commissioned by the Global Fund headquarters in Geneva to commence investigations following information from a whistleblower, who reported that the activities and operations of Global Fund Uganda were being mismanaged – including the giving of kickbacks for certain disbursements; non-reporting and misreporting by Global Fund beneficiaries and outright concoction of accountabilities. The beneficiaries were a variety of NGOs, Private Sector Organisations as well as government departments that had fulfilled the criteria for sub-recipients, the Government of Uganda being the main recipient. PwC therefore proceeded to investigate a random sample of only 30 sub-recipients, even though by that time over 400 agencies had received GF monies.⁶⁷⁵

⁶⁷⁴ Asiimwe, G. B. and C. Muhozi (2005). *The State of Constitutional Developments in Uganda for the Year 2005*, Kituo Cha Katiba - East African Centre for Constitutional Development.

⁶⁷⁵ Global Fund Inquiry Report, Introduction.

As soon as the suspension of funding was announced, the President wasted no time in setting up a Commission of Inquiry into the matter. Subsequently, images of a jovial Secretary to the Treasury shaking hands with the Chief of Operations from the GFATM Secretariat were relayed by the news media, showing donors' approval of the steps that the government was taking to remedy the situation. Indeed, the appointment of the inquiry enabled a partial lifting of the ban on funds, as the GF agreed that it would disburse a portion of the funds. A GF official was quoted saying that the Secretariat had been convinced to lift the suspension because the government had "promptly acted in a manner satisfactory to the GFATM and other stakeholders to rectify the situation..." and was pleased with the government for taking "a quick and proactive role in addressing the serious concerns that we all shared."⁶⁷⁶

The Commission's terms of reference were to investigate allegations of grave mismanagement of and corruption in the Global Fund; and to recommend possible redesigning of the Global Fund's operations; recovery of funds irregularly used or lost; redress against the culprits; and measures to stop a repeat of the mismanagement and of the financial losses.

⁶⁷⁶ Candia, S. (2005). "Global Fund Ban Lifted," *The New Vision*. Kampala.

Proceedings of the Global Fund inquiry

Justice Ogoola's approach to chairing inquiries was noticeably different from that of Justice Sebutinde; indeed, this could have influenced his appointment to chair this inquiry after the URA one had ended in disaster.⁶⁷⁷ Despite this, the inquiry captured public attention and commanded the news headlines for the time of its duration, if not for the Chair's style, for the shocking revelations about corruption in the project. Also, the inquiry was broadcast live on Wavah Broadcasting Services (WBS) Television, thereby making the inquiry a momentous national event. It was the first inquiry to be entirely broadcast live on TV. From the very beginning, the country was mesmerized by tales of political interference, nepotism, cronyism, and outright theft; all conducted with utmost impunity. For instance, it emerged that then Minister for Health, Jim Muhwezi, dictated to the Permanent Secretary in the Ministry that no recruitment to the project should take place without his clearance. The Minister then directed that Dr. Muhebwa, who had no project management experience, be hired to head the project over the preferred candidate for the job, a Dr. Mutumba. From that point onwards, recruitment to the PMU took on a highly informal style typical of a neo-patrimonial mode of governance. There was no advertising or interviews, but head-hunting. Technical expertise and qualifications took second place to political "know-who" based on kinship and friendship ties. For instance, Julius Mugisha, the son of the State Minister for Health, Dr. Alex Kamugisha, was employed as the Data Management Officer despite being a fresh graduate with a business

⁶⁷⁷ See Joachim Buwembo's comment about the lack of public interest in an earlier inquiry chaired by Justice Ogoola in "Bankers steal money while boring the public to death," *The East African*, 30 August 2000, at <http://allafrica.com/stories/200008300295.html>, last accessed 23 February 2011.

degree. Many of the other staff were similarly unqualified for their jobs and it was unclear on what basis they had been hired.⁶⁷⁸

Even more shocking were the terms and conditions of the PMU staff. Their salaries and benefits were far higher than those of other public servants. Whereas staff of *ad hoc* donor funded projects generally earn higher salaries than the average public servant, the Global Fund was clearly being treated as a bonanza. In addition to their very high salaries, (for example, a driver was earning 1,000 USD, about the same as a University Professor), they awarded themselves allowances such as hardship allowance, facilitation allowance, and others whose existence could not be justified.

Furthermore, the Permanent Secretary of the Ministry of Health, Mr. Kezaala, authorised GF monies for activities that did not fall under the project's docket. Whenever he would be asked by the Minister to fund activities which the Ministry of health Budget could not cover, he would "borrow" from the GF PMU and cover his tracks by issuing false vouchers and invoices. This led to speculation that some of the money was used in the 2006 presidential and parliamentary election campaigns. Circumstantial proof that the monies were used for political campaigns can be gleaned from the fact that many "immunisation campaigns" or "ghost supervision visits" were undertaken by the Minister,

⁶⁷⁸ Global Fund Inquiry Report, p. 5. Despite the fact that these goings-on were portrayed by the Global Fund Inquiry report as anomalies, it is well known that recruitment in many public service positions in Uganda follows a similar trend. As observed by Mwenda and Tangri, the bureaucracy and public service positions in Uganda are extensively used by the regime to reward supporters, and thus resulting in distortion of the recruitment process. See Mwenda and Tangri (2005); op. cit. See also Mwenda, A. (2007) "Personalising Power in Uganda." *Journal of Democracy* 18(3): 23-37.

Deputy Minister and Minister of State, all of whom were Members of Parliament with constituencies to woo and win.⁶⁷⁹ It was also reported that the Office of the First Lady, a non-constitutional office with unclear status and accountability lines, had also received money from the GF.⁶⁸⁰ This provides a vivid example of how donor funds are diverted to prop up and consolidate corrupt regimes in countries such as Uganda.⁶⁸¹

The inquiry also found that there was widespread corruption and financial irregularities amongst the sub-recipients, that is, public, private and NGO sector organisations that applied for and were given GF monies. Particularly with the NGOs, there was rampant misuse of funds, which were banked on personal as opposed to organisational accounts, used for personal purposes and false accountabilities issued. A number of individual directors of bogus NGOs that received money but did not carry out any work were recommended for further investigation and prosecution. One interviewee observed that:

The Global Fund Inquiry was interesting because the government has used it to illustrate that corruption is not just in the public sector but in the private NGO sector as well, as many of the culprits who misused Global Fund money were NGOs.⁶⁸²

⁶⁷⁹ Global Fund Inquiry Report 2006, pp. 14-16, 160-161, 356- 360.

⁶⁸⁰ AfricaConfidential (2007). "Doctor, Doctor: How healthcare funds went astray just before an election – and the President's allies are under investigation again." *Africa Confidential* 48(20)

⁶⁸¹ Mwenda and Tangri (2005) op. cit.

⁶⁸² Personal Interview, 10 July 2009

Another revelation that emerged from the GF inquiry was the manipulation and cunning that characterised the project's foreign exchange transactions. Grants from the headquarters in Geneva were issued in US dollars and banked on the PMU Foreign Exchange account with the Development Finance Company of Uganda (DFCU). However, from time to time, the PMU needed to withdraw money in Uganda shillings to conduct its day-to day operations. The audit by PwC showed, and the inquiry was able to verify that local currency would be withdrawn at exchange rates far below the market rate, in order to enable the bank as well as an intermediary law firm that acted as a "broker" to make a huge profit on the transaction. By the time of the inquiry, this "broker" had made a "commission" of Uganda shillings 295 million (about USD 147,500) from these foreign exchange transactions. This event took on a new twist when it was revealed that the Chief Executive of DFCU, Mr. Katuntu, and the Minister of Health Mr. Muhwezi, were "golf buddies" and exchanged numerous phone calls on the days on which foreign exchange transactions took place.⁶⁸³

Also of interest was the fact that the inquiry itself became embroiled in the corruption it was supposed to be investigating. Criminal Investigation Department (CID) Officers attached to the Commission of Inquiry were found to be colluding and conniving with some of the witnesses implicated in the scandal to divert the inquiry process by hiding and distorting evidence available to the inquiry. For example, Detective George Komurubuga was alleged to have received a bribe of U Shs. 5 million to destroy evidence pertaining to

⁶⁸³ Global Fund Inquiry Report, pp. 434- 461

allegations of corruption by Paula Turyahikayo, the PMU Assistant Public Coordinator.

Both Ms. Turyahikayo and Inspector Komurubuga are being prosecuted for this.⁶⁸⁴

As happened in the Junk Helicopters inquiry, some of the officials involved pointed a finger at the President as having sanctioned their irregular decisions. For example, Minister Jim Muhwezi told the inquiry the President had authorised him to withdraw money from the project to finance the treatment of Mr. Matthew Rukikaire, former privatisation Minister and an NRM “historical” at Nairobi Hospital. 40 million shillings⁶⁸⁵ was promptly withdrawn from the fund and used to settle Mr. Rukikaire’s hospital bills.

The Commission’s most memorable moment was the testimony and cross-examination of Jim Muhwezi, then Minister for Health, which descended into a heated exchange between Justice Ogoola and the Minister regarding which one of them was more patriotic than the other. At the end of Muhwezi’s testimony, Justice Ogoola said he owed it to the people of Uganda to “do the right thing” and apologise for the Global Fund mess.

The affairs of state have gone singularly wrong under your stewardship. The body politic has been deeply wounded... the wound has festered under your nose. The filth and dirt has accumulated under your leadership. My personal message to you is that in times like this that men stand up out from boys . It is in crises like this that statesmen stand out from politicians. You Jim Katugugu Muhwezi have the opportunity to look in that camera and with a straight face tell the President who

⁶⁸⁴ Interview with State Attorney, DPP, 17 July 2008.

⁶⁸⁵ 40 million shillings is approximately US\$20,000.

appointed you and the people of Uganda who elected you to lead them all these years that you are sorry.⁶⁸⁶

To which Muhwezi retorted:

I would like to say that when there has been a call for patriotism and statesmanship I have been there. I do not know my lord where you were at the time but the peace and tranquillity and rule of law which prevails today I was part of... I do not posture when I am doing things even when I am here. I am a real person, Jim Muhwezi. I think I have not failed my appointing authority and my people. My lord, if it was a question of taking responsibility in that fashion, you would have resigned when two judges were alleged to have been bribed but you did not.⁶⁸⁷

Justice Ogoola's statement on this occasion showed that he too, had taken on the symbolic role of being the Ugandan people's voice to express outrage against the corruption of the regime. Like Justice Sebutinde had done in previous inquiries he too, stepped out of the confines of a traditional judge's role, to take on the cause of anti-corruption. Indeed, Mr. Muhwezi later complained that by asking him to apologise, Justice Ogoola had turned the inquiry into a Kangaroo Court. The exchange also illustrated existing tensions between the executive and judicial branches of government in Uganda, as previously discussed in Chapter 3.⁶⁸⁸

⁶⁸⁶ See Luggya, J. & P. Nyanzi (2006) "The Highs and Lows of the Justice Ogoola Commission of Inquiry into the Global Fund," *The Monitor*, 16 April 2006, at <http://allafrica.com/stories/printable/200604170160.html>, last accessed 12 February 2011.

⁶⁸⁷ Ibid.

⁶⁸⁸ See chapter 3, at 3.2.2.

Aftermath and outcome of the Global Fund inquiry

After hearing testimony from about 150 witnesses and reviewing more than 450 documentary exhibits, it was no surprise that the GF inquiry report was a staggering 600 page narration of what the Chair referred to as a “pile of filth.”⁶⁸⁹ Corruption and abuse of office were part and parcel of the PMU’s establishment, staff recruitment, and day-to-day methods of work. According to one of the State Attorneys in the DPPs office, the findings revealed a total of 400 criminal cases of corruption.⁶⁹⁰ However, a notable innovation of the Global Fund inquiry in Uganda is that under the Terms of Reference, it was empowered to direct that any misappropriated funds be refunded.⁶⁹¹ As a result, many individuals and organisations were ordered to refund money even when they were not recommended for prosecution. As of April 2010, U Shs. 2.3 billion had been deposited into the central bank by individuals and organisations implicated in the inquiry. Diverse agencies including Local Governments, the National Chamber of Commerce, the Ministry of Finance, Ministry of Education and even the Solicitor General’s office received Global Fund Monies but did not account for them, and have since refunded the money.⁶⁹²

After amalgamation and combining charges from the 400 issues recommended for prosecution, 144 cases are undergoing further investigations with a view to prosecution. This is a daunting task that will take many years to fulfil. At the time of the field study,

⁶⁸⁹ Wallis, D. (2005). “Uganda minister denies blame for AIDS fund scandal,” *Reuters News Media*, Kampala.

⁶⁹⁰ Personal Interview, 17 July 2009

⁶⁹¹ Global Fund Inquiry Terms of Reference, Legal Notice No. 15 of 2005

⁶⁹² Mugisa, A. (2010). “Stolen Global Fund Money Recovered,” *The New Vision* 3 April 2010. Kampala, New Vision Publications Ltd.

investigations had been completed for less than 10 of these cases despite technical assistance from fraud experts from the United Kingdom and European Union Serious Fraud Offices. Three cases have been successfully prosecuted, and the culprits have been jailed. 1 case is in the Court system but hearing has not been completed. 5 are nearing completion of investigations and will soon be filed before the Anti-Corruption Court.

The big fish that the public and donors would like to see in the dock are the three Ministers who were responsible for health at the time –Mr. Jim Muhwezi, Captain Mike Mukula – Minister of State and Dr. Alex Kamugisha, Deputy Minister. The inquiry report recommended that all three be prosecuted for perjury, causing financial loss and uttering false documents. In particular, all three ministers undertook numerous ghost trips around the country under the guise of supervision visits. The falsity of the visits was proven by the fact that petrol receipts for fuelling stations outside the capital, Kampala were submitted as accountability, and yet on those same days that the Ministers were supposed to have travelled outside the city, they had signed the Parliament Register in Kampala and attended parliamentary proceedings.⁶⁹³

However, there are presently no plans to prosecute the three ministers; the DPPs office says there is insufficient evidence.⁶⁹⁴ Indeed, in a separate personal interview one of the Ministers indicated that as a Minister, no wrong doing can be proven against him as he did

⁶⁹³ Global Fund Inquiry Report, pp. 180-183.

⁶⁹⁴ Personal interview, 17 July 2009

not personally handle any of the funds. The fall has to be taken by the Permanent Secretary Mr. Kezaala and the Ministers' Personal Assistants because the evidence available points to them. Although all three Ministers of Health were dropped from Cabinet, they retained their Parliamentary Seats. They are being considered for prosecution only for the relatively minor crime of perjury against the inquiry. Nonetheless in an interesting twist of events, in 2006 the President directed the then Inspector General of Government (IGG) Mrs. Faith Mwendha to investigate the Ministers for the alleged misappropriation and misuse of funds from the Global Alliance for Vaccines and Immunisation (GAVI), which sounds very similar to the Global Fund but is a completely different matter that was not the subject of the judicial inquiry. The IGG subsequently brought criminal charges against the three ministers and a State House official named Alice Kaboyo for the alleged misappropriation of GAVI funds.⁶⁹⁵ The criminal proceedings are on-going and the outcome is awaited.

So far, successfully completed prosecutions from the Global Fund Inquiry include that of Dr. Teddy Ssezi Cheeye, former Director of the Economic Monitoring Internal Security Organisation, and so far the biggest fish to have been netted. He was convicted for misappropriating U Shs. 110m allocated to an organisation he founded to take advantage of the Global Fund “windfall” called the Uganda Centre for Accountability and sentenced to 10 years in prison. However, he is currently out on bail pending an appeal. The hearing

⁶⁹⁵ Ariko, C. (2010). Ministers' trial over GAVI funds to resume. *The New Vision*. Kampala, New Vision Publications Ltd.

of the appeal commenced in April 2010 and judgment is awaited. Other convicts are Mr. Salongo Kavuma, former director of programmes in Uganda Television, who misappropriated shs. 49 million and was sentenced to 5 years' imprisonment. Ms. Annaliza Mondon and Ms. Elizabeth Ngororano were also sentenced to 5 years each for failure to account for money they received personally on behalf of an NGO Value Health that they founded.⁶⁹⁶

Global Fund the most successful inquiry?

The Global Fund Inquiry was described by one respondent as the “most successful” yet.⁶⁹⁷ It is regarded as such because the report was published immediately after it was handed over, and also because prosecutions are on-going and money that was misappropriated is being refunded. The success of the inquiry has been attributed to two main factors; firstly, the insistence by the Chair Justice James Ogoola that he would agree to chair the inquiry only if he could release the full report to the media at the same time as he handed it over to the President. This was reportedly done informally, as there is no indication of this publication requirement in the inquiry's terms of reference. It ensured that there was no cover up of any of the findings. In addition, the Secretary noted that the overwhelming public response with many members of the public volunteering evidence and information enabled the inquiry to do its work quickly and successfully. Notably, the inquiry also received technical expertise from the UK and EU Serious Fraud Offices.⁶⁹⁸

⁶⁹⁶ Mukisa, L. (2010). Global Fund: Cheeye's Appeal Kicks Off. *The Daily Monitor*. Kampala, Nation Media Group

⁶⁹⁷ Former Secretary, Personal Interview 22 July 2009.

⁶⁹⁸ Global Fund Report, 2006.

However, the untold story of the Secretary's boast about the success of the inquiry is the subject matter of the inquiry, which related to the misappropriation of HIV/AIDS funding. Firstly, Uganda is purportedly an International HIV/AIDS success story, having managed to reduce HIV/AIDS infection rates from 30% of the population to just 7%. The Lancet observed: "The Global Fund's decision to suspend Uganda's five grants sent shock waves through the country, whose robust response to AIDS is a point of national pride."⁶⁹⁹ President Museveni has personally been credited for much of the country's HIV/AIDS response, due to his personal involvement in spearheading open and frank discussion about AIDS and sexual behaviour.⁷⁰⁰ At the time when the scandal broke in 2005, Museveni had already begun to lose credibility due to his third term / presidency for life project. Hence he could not afford to lose further credibility as an internationally renowned HIV/AIDS activist by appearing to be lenient on those who were stealing AIDS money.

In addition, it is evident that donor pressure in the instance of the Global Fund has been particularly heavy, as shown by the immediate action to suspend the grants. Indeed not all of the grants have been reinstituted to date, as the GF maintains that Uganda has still not made the necessary arrangements to ensure that the funds are protected. Amongst donors in general, there was dissatisfaction with the government's slow progress in prosecuting

⁶⁹⁹ *The Lancet*, Volume 366, Issue 9500, Pages 1839 - 1840, 26 November 2005

⁷⁰⁰ Tumushabe, J. (2006). *The Politics of HIV/AIDS in Uganda*, United Nations Research Institute for Social Development, Bor, J. (2007). "The Political Economy of AIDS leadership in developing countries, an exploratory analysis, ." *Social Science & Medicine* 64: 1585-1599.

those responsible for the scandal. An official from the Norwegian embassy in Uganda expressed concern over the government's delay to prosecute those implicated, and wrote to the Geneva-based Inspector General of the fund expressing disapproval of the fact that nobody had been prosecuted two years after the commission of inquiry.⁷⁰¹

As a result, the Inspector General of the Fund visited Uganda and found that there were still insufficient measures to guarantee that the Global Fund Money in Uganda is in safe hands.⁷⁰² The grants were subsequently withdrawn from the government and been put under the oversight of a civil society organisation known as The AIDS Support Organisation (TASO).⁷⁰³ This decisive action by donors appears to be a change in tune from their hitherto more lenient approach to corruption in Uganda. As Mwenda and Tangri observe, "donors have begun to realise belatedly that they are/ have been propping up a corrupt regime in Uganda."⁷⁰⁴ While there may be some truth to this, it is more likely that donors have been knowingly propping up a corrupt regime in order to further their own interests, as we saw in chapter 2.⁷⁰⁵

At this point, I will turn my attention to analysing the role that judicial commissions of inquiry have played in Uganda's governance, particularly in light of the arguments I have made in the previous chapters.

⁷⁰¹ Wendo C. (2008) "Uganda: Why Global Fund Whip is cracking now," *The New Vision*, 31 October 2008; at <http://allafrica.com/stories/printable/200811010025.html>, last accessed 28 September 2009.

⁷⁰² Ibid.

⁷⁰³ Ngatya, K. (2009). "Taso to manage Global Fund Cash," *The Daily Monitor*. Kampala, Nation Media Group.

⁷⁰⁴ Mwenda and Tangri (2005), op. cit.

⁷⁰⁵ See discussion on self-interest versus altruism as motives for giving aid, Chapter 2, pp. 52 et seq.

Chapter 6

Analysing the role of commissions of inquiry in Uganda: how to be a good governor without undermining your support base (part II)

6.1 Introduction

This chapter aims to analyse the role that judicial commissions of inquiry play in Uganda through the views of primary respondents to the study, secondary respondents whose views were obtained from newspapers, internet blogs, internet discussion forums, radio, theatre and other art forms. In Chapter two, we saw how the Uganda government, through its PRSP and PRSP progress reports has frequently relied on judicial commissions of inquiry to show that it is complying with aid conditionality. In Chapter three it was shown that the Uganda government agrees to the formal requirements of good governance but subverts them in various ways, creating a gap between anti-corruption rhetoric and reality.

Chapter four suggested that the unique characteristics of inquiries, such as quasi-judicialness and public inquisitorial proceedings that result in non-binding recommendations, is what makes them amenable to governments in myriad countries for handling all sorts of crises, and indeed to the Uganda government as a means of being seen as a “good governor” without undermining its support base. The previous chapter has provided a narrative of the highlights of four inquiries that were chosen as case studies for this research.

In this chapter, I present and analyse the views of the public on the role and impact of commissions of inquiry. Most of the views expressed indicate that judicial inquiries are a mere public relations exercise or a white-wash; a strategy of appearing to do something about corruption, whilst ultimately doing nothing. This is in line with a number of scholars' views on the role of inquiries. However, as suggested previously, such a view of inquiries would not explain their enduring appeal to both governments and citizens as a crisis-response mechanism. Indeed, why would any self-interested government attempt to dupe its citizens knowing that they would eventually realise that they had been duped? Therefore my analysis of respondents' views digs beneath the surface in the search for a deeper understanding of why the Uganda government appoints inquiries into corruption and why the public retains an interest in them despite the prevalent pessimism regarding their role in governance.

6.2 Deciphering the role of commissions of inquiry in Uganda

6.2.1 Respondents' views: inquiries are "useless!"

Due to the failure to prosecute those implicated in corruption by inquiries, many respondents to this study and other commentators have given a negative evaluation of commissions of inquiry. Below I reproduce various views that show that many Ugandans regard inquiries in a negative light due to their perceived limited impact on corruption.

Journalist and Scholar Andrew Mwenda calls them a “mockery of justice.”

These inquiries have been political vehicles to legitimise an extremely corrupt system by demonstrating to an unsuspecting public that something is being done. This politicised and pedestrian approach to fighting corruption will not help Uganda. Year, 2000! A policeman, with a wife and four children in Kampala is paid Shs 70,000 per month (about US\$35). It cannot help him survive even for a week. He takes a bribe to make ends meet. Who is being immoral here: the government which pretends to employ the policeman, or the policeman who makes a genuine attempt to feed his family? Whose morality are we talking about? Take URA for example: The wages in that organisation were set in 1994 and have never been revised. People are promoted on the basis of tribe, supporting the Movement or third term rather than on demonstrated competence and probity. The president constantly writes lists of people (he calls them cadres) to be hired by the organisation. The URA does not offer long term career rewards, job insecurity is high. Under such circumstances, it is illusory to expect staff to pursue corporate goals. Instead, they pursue individual maximisation – steal as fast and as much as you can before you lose your job. These are the political and institutional sources of corruption that we need to deal with. Sebutinde-like commissions seek to name and shame the corrupt. That will not help.⁷⁰⁶

Dr. James Rwanyarare, Chairman of the opposition UPC, had this to say about commissions of inquiry:

We are getting uncomfortable with reports done by Ms. Sebutinde. She appears to be the government’s person in the legal hatchets to serve Mr. Museveni’s whims.⁷⁰⁷

⁷⁰⁶ Mwenda, A. M. (2004). “Commissions of Inquiry: a mockery justice.” *The Monitor*, 6 March 2004. Kampala.

⁷⁰⁷ See Mulumba, B. D. (2004) “ Did Sebutinde step in a trap?” *The Monitor*, 22 August 2004.

Mrs. Miria Matembe, former Minister of Ethics and Integrity, speaking on KFM Hotseat, a radio call in talk show, said:

What about the helicopter saga which was the subject of the Commission of Inquiry? The President hailed and praised Sebutinde... but what happened to those recommendations? I have been the Minister – all these white papers we make... what happened? Billions lost! His brother, who has been central to all this corruption, was made a witness! What is lacking is not investigation... what is lacking is government's will to prosecute and punish the corrupt. The government of Museveni has no will to fight corruption. In fact it has made corruption very lucrative...⁷⁰⁸

One of the interviewees in this study, an official of Uganda's foremost anti-corruption NGO ACCU also had no kind words for inquiries:

Inquiries are completely useless money and time-wasting mechanisms. The work they do could easily be done by other agencies like the Auditor General and other established agencies. The government uses them to buy time and to protect certain individuals while sacrificing others. Cheeye was convicted but it is probably because the government wanted to get rid of him....There is no shame associated with being corrupt therefore they cannot be a naming and shaming mechanism. Although they can be said to promote public debate and discussion, the limelight and publicity are short lived. It is all about the rule of law and how many heads can be said to roll after the inquiry. As long as there is no rule of law the inquiries are useless. It is also about political will to fight corruption. But how can there be political will when the top government executives are part of the gravy train and it is well known that the proceeds of corruption are used to finance election

⁷⁰⁸ Mwanguhya-Mpagi, C. (2007). "KFM Hotseat" radio talkshow, hosting Miria Matembe, former Minister for Ethics and integrity. Kampala, 93.3 KFM.

campaigns and such? The real issue with corruption is psychological and involves attitudinal change. No amount of laws and institutions will help unless attitudes change.⁷⁰⁹

Discussions by different individuals in the news media reveal a similar attitude towards inquiries. James Ikuya, a “radical” member of the NRM, calls them “public relations stunts to hide facts”:

Our many years of NRM administration were to bring new hope for this country, but it appears that we have also developed a knack for meaningless inquiries... many of the findings have not been made public.... The only safeguard to misrule in our country is to base governance on defined systems and institutions instead of depending wholly on the moods and favours of individuals. It is by adherence to the observation of rules by all that it becomes legitimate to assign commissions to reveal extraordinary events of violation and flouting of social norms for the purpose of uprooting indiscipline. Without this, inquiries can only be hypocritical, serving as public relations stunts to hide facts.⁷¹⁰

Moses, a discussant on the government’s political will to fight corruption said on the New Vision Online Discussion Board:

My brother, don’t get so carried away by the false belief that his report (CHOGM)⁷¹¹ will come to anything so important and that the thieves will end up in Luzira!!!!⁷¹² This is the usual everyday trick, first still(sic) the money then make a hullabaloo about nothing. Institute a commission of inquiry, it comes up with its

⁷⁰⁹ Personal Interview, 15 July 2009.

⁷¹⁰ Ikuya, J. M. (2009). “*What purpose do Commissions of Inquiry Serve?*” *The Weekly Observer*. Kampala, Observer Publications Ltd. “Radical” members of the NRM is the term used to describe members of the ruling party who do not necessarily tow the party-line.

⁷¹¹ Recently concluded parliamentary Public Accounts Committee (PAC) inquiry into the misappropriation and mismanagement of funds for Uganda’s hosting of the Commonwealth Heads of Government Meeting (CHOGM).

⁷¹² Luzira is the name and location of Uganda’s Maximum Security Prison.

final verdict that clearly points out that money was unquestionably stolen. Then send a few to Luzira for a few days owing to the fact that their super rich fellow thieves will bail them out and head straight to their ungodly mansions with a few phone calls to State House to announce their victories, while they sip a cold bottle of Bell lager, Johnnie Walker and smoke a cigar while the *Wananchi* (citizens) continue to gasp!!!!!!! By the way, how many inquiries have they so far instituted????? Global Fund, GAVI, Junk Helicopter, UCB Purchase, fake Military Uniforms, Ghost soldiers..... What have they come to in the end????? By the way, don't forget that the brother... had a big and deep hand in both the Junk helicopter and UCB bogged up deals!!!!????⁷¹³

Similarly, Journalist and blogger Gerald Bareebe says:

I have never been convinced that the President is committed to fighting corruption in Uganda... a lot of corrupt NRM Cadres have been left free after being implicated in corruption scandals because they support the ruling government or they are close associates of President Yoweri Museveni....Ask yourself what has been done after the recommendations of Justice Sebutinde's report into the junk helicopters which couldn't even fly from Entebbe to Kampala and yet they were bought to fight Kony in Northern Uganda? What of the current crisis of supplying fake seeds and pangas to the IDPS? What of the GAVI funds. Don't also forget the Global Fund. Name them... If the fight against corruption is to be taken seriously then Salem Saleh and Kahinda Otafiire should be in prison for buying fake helicopters and plundering Congo respectively...⁷¹⁴

In an FGD I conducted with young Ugandans who are professional in various fields, aged 24-35, the views on inquiries were similarly sceptical:

⁷¹³ Moses, A. A. (2009). *New Vision Online Discussion Board*. The New Vision Online, <http://www.newvision.co.ug>

⁷¹⁴ Bareebe, G. (2007). "Is Museveni serious on corruption?" Road to 2011 Elections. *The Monitor*, Kampala. 2010

What I recall about the junk choppers is that there was too much hullabaloo and a lot of scintillation by the media and then nothing, total silence as if nothing had happened. I actually remember thinking about the futility of it all, I thought it was a waste of time because in Uganda "bush war heroes" are not held accountable. (Sheila)

It appears that these inquiries are just political tools to hoodwink the public into thinking that something is being done but in actual sense nothing at all is seen to be happening. The unlucky few who become 'insignificant' to the regime are sacrificed and the corruption continues. (Apio)

Of course the president had to forgive his brother. It really hurts that in the end, it's the taxpayers who have to make up for these losses but I've reached a point where I believe that those who are found to be corrupt will never be punished in Uganda, and it amazes me how they always get around the law, maybe the law is not too strict/strong on corrupt officials. Even those who are arrested get out on bail! (Referring to Teddy Cheeye who was convicted for his role in the Global Fund corruption scandal but has since been released on bail pending appeal.) So in the end the commission's efforts are futile.... (Filda)

The junk chopper probe exposed the lack of political will by Museveni's government to stamp out corruption from among their own ranks. For the president to tell the nation that he ordered his brother to INJECT (participant's emphasis) the USD 800,000 bribe into the war against LRA was criminal and the two should have been prosecuted. As for Saleh, he - and alleged thieves (*laughter from participants*)... but that is what they are! Museveni's family continue to enjoy the protection from the president and as such making Museveni part and parcel of the entrenched corruption in the country (Akwat).

The corruption inquiry committees are always very loud yet the results can be hardly seen. They should involve a large legal team so as to aid establish incriminating evidence (Namono).

You know...something is only useful in so far as it serves its purpose; inquiries in Uganda are totally useless, as they do not serve their objective of holding culprits accountable. It is actually wastage of public funds to appoint a commission of inquiry and do absolutely nothing about its findings. It is actually frustrating to the public because we are made aware of these atrocities and we see no justice; TOTAL WASTAGE (Participant's emphasis; (Sheila).

I really don't see the purpose of identifying the corrupt and they are never brought to justice. The commission should be given enough authority to sentence such officials and there should also be political will to fight corruption. If it's not there, the commission's efforts are in vain. (Filda)

I will agree with Sheila, the inquiries are a further waste of public funds. The reports are never implemented by the Museveni government - mainly because of lack of political will. They are only helpful for us to know the politically influential people that seem to enjoy total confidence of the president (Akwat).

Well, the commissions serve their purpose in part when they expose the various perpetrators of so many ills; however, the poor implementation of their recommendations is always a sad mockery of the whole process. The citizenry need to see real justice! (Nuwagaba)

Thus we see a high level of scepticism and cynicism from members of the public, many of whom are journalists or professional Ugandans with internet access, as well as Ugandans

in the Diaspora. However, even less educated Ugandans in the informal sector, who constituted one of the FGDs I conducted, expressed their views on the futility of inquiries:

But sometimes you even just see that someone is stealing money. They have so much property even beyond what their salary can accommodate, and then you say you want to inquire. Inquire about what, when it is obvious? After all, once they discover the report has named someone who "fought", they hide the report. They are relatives who are just sharing the country's money. It is even embarrassing Uganda in the eyes of the world. I hear they even say we were the third in corruption in the world. (Abayo)⁷¹⁵

But even if we say these things, there is nothing going to be done. Even those who "eat" money, there is nothing going to be done. It's like educating a child and giving it all the right information, but when it goes in the field (gets a job and starts working), it does something totally different. You'll just have wasted your time. (Clever J).

Thus we see that inquiries are regarded by respondents to this study as useless and time-wasting, mainly because they have not led to the conviction and punishment of those implicated in corruption. They are seen as farces, public relations stunts, and disguised attempts to cover up the truth. This is line with the analyses of scholars such as Sedley, Hart, Drewry, Wells and others, discussed in Chapter 4.⁷¹⁶ The respondents' views show that they are aware that the tangible results of inquiries will be negligible; therefore they are not hoodwinked. Accordingly, if indeed inquiries were public relations stunts, they have failed miserably. Why then, would the government appoint them?

⁷¹⁵ The allusion to the Corruption Perception Index is noteworthy.

⁷¹⁶ See discussion on "Why Commissions of Inquiry," Chapter 4, at 4.4.

6.2.2 Legitimation before the Ugandan public by creating a space for criticism and resistance to the regime

According to Ashforth; Gilligan & Pratt; it behoves us to conduct a deeper analysis on the purpose of inquiries that goes beyond the conventional view of inquiries as white-washing, public relations exercises.⁷¹⁷ As argued in chapter four, such a deeper analysis would lead us to view inquiries as “reckoning schemes of legitimation,” to borrow Ashforth’s description. I would agree generally that in Uganda too, the main purpose of inquiries is legitimation, that is, to enhance the rational acceptability of the government before those to whom it is accountable, donors on one hand, and citizens on the other. I will first consider how commissions of inquiry legitimate the government before the citizens of Uganda and consider legitimation before the donors in the next sub-section.

I suggest that the Uganda government knowingly takes the risk that the people will think it is trying to hoodwink them because ultimately, a negative authoritative evaluation by a commission of inquiry creates a space and opportunity for people, especially those who are opposed to the NRM, to air out their dissatisfaction with the regime. Providing such a space and opportunity presents that government as tolerant of criticism and therefore democratic, especially in comparison to previous regimes such as that of notorious dictator Idi Amin. Despite the fact that there is growing opposition to the NRM government, it should be borne in mind that countrywide, NRM supporters who are mostly peasants, still

⁷¹⁷ Ashforth (1990) op. cit, Gilligan and Pratt (2002) op. cit.

constitute the majority as I will illustrate shortly. It may be inferred that the NRM is well aware that on the whole, its supporters outnumber its critics, and the threat to its power arising from non-implementation of recommendations is only a minimal one. By creating a space and forum where those opposed to the government can vent their frustrations, inquiries ultimately serve to legitimate the NRM as a regime that is tolerant of criticism both the public and the judiciary.

In the same vein, the public continues to keenly follow the proceedings of inquiries, despite knowing that they will not amount to much. The public (as delimited by my urban study population) maintains interest in inquiries because the sensational revelations of corruption provide evidence/confirmation that the current regime is corrupt and therefore unfit to rule. This is pertinent, given the fact that urban areas are opposition strongholds in Uganda, while the regime's support base is mainly in the rural areas. In the previous Parliament whose tenure ended in March 2011, of the 14 municipality parliamentary seats in the country including the capital Kampala, the NRM controlled only 4 and the Opposition, the other 10. Out of the 8 parliamentary seats in the city, the NRM had only one, while the opposition had 7 seats. One can therefore speculate that the voting patterns show that the urban population is engaged in resistance to the regime. This is the population that participates in the inquiry process by attending proceedings, watching them on TV, listening to them over the radio or reading the newspapers. One may infer that the public acquiesces to the appointment and process of commissions of inquiry because their hostility to the ruling regime is temporarily placated by the naming and

shaming of corrupt government officials during inquiry proceedings. Such proceedings enable them to reach their own verdicts about the guilt of particular individuals and indeed of the whole NRM regime. Inquiry proceedings “dig up dirt” and therefore provide the fodder for resistance to the regime.

Indeed, the failure to publish inquiry reports, and above all, failure to implement the recommendations of inquiries, has come to epitomise the NRM government’s lack of political will in the fight against corruption and one of its key failings as a regime. Jasper Tumuhimbise, a prominent anti-corruption crusader and formerly head of ACCU Uganda, says

There have been so many inquiries like the Congo timber saga, the Junk helicopters, Global fund and the police inquiry, but implementing the recommendations either takes a long time or is not followed up. And as long as this is still going on, we have failed as a country.⁷¹⁸

Mr. John Kazoora, formerly a member of the NRM and now a member of the opposition FDC, wrote an opinion piece in the newspaper which also reflects that many have not forgotten the numerous scandals and subsequent inquiries:

Two years down the road, what has the Auditor General uncovered, absolute filth right from the Vice President, Prime Minister’s office, Foreign Affairs, Works, Local Government, ICT ministries and many others. The usual gaiety leaders mastered their game. “Chogm was a success, those who don’t see so are enemies of the Movement and Development, they are trying to settle political scores,” as one

⁷¹⁸ Tumuhimbise, J. (2009). Poverty or political will? *Jasper's Views: Corruption in Uganda*, at <http://jaspermt.blogspot.com>, last accessed 24 February 2011.

involved minister has claimed! He further hisses “We are not bothered by his (PAC Chairman’s) hype. I know some donors are behind it, but we are used to this.” His churning of tripe however, should be taken with a pinch of salt... This arrogance is only equalled by the Chicago untouchables, the Mount Kenya Mafia and now the “*Our turn to chew Uganda Alliance*”. But as for most Ugandans, life continues and are comforted by Arsenal and Chelsea as coffers are bled dry. Who cares whether it is Tri-Star, Temangalogate, Chogmcon or Helicopter Junk when they all have the backing of the Ssabagabe (King)...⁷¹⁹

Mr. Kazoora’s comment laments corruption in general but specifically questions the legitimacy of the regime by comparing it to the Chicago untouchables and the Mount Kenya Mafia, and naming it the “Our turn to chew Uganda Alliance.” In doing this, he denigrates the NRM as being similar to previous corrupt regimes from whom they purported to liberate the country when they took power in 1986.

Dr. Muniini K. Mulera, a Ugandan Paediatrician in Canada with a popular column in The Monitor, and member of the opposition FDC also observes:

As a certified Chinua Achebe Addict, I am forever hearing the voices of his varied characters in his great novels. Reading the Chogm report last week promptly triggered the voice of Mr. Green, the detestable European boss of Obi Okwonkwo in No Longer at Ease.

Mr. Green, in conversation with his British Council Friend, assures him that he understands why Okwonkwo, a UK-trained Nigerian Bureaucrat, took a bribe for which he now stands accused. “The African is corrupt through and through,” Mr.

⁷¹⁹ Kazoora, J. (2009). Chogmgate: I am surprised that we are surprised. *The Daily Monitor*. Nation Publications, Kampala.

Green says. Oh how I hated that statement the first time I read it more than four decades ago! Yet how many times our continent's rulers have given reality to the fictional Mr. Green's damning of my race! One gets depressed reading through a catalogue of the known corruption scandals of the Museveni regime. Bank Paribus, Uganda Commercial Bank, junk helicopters, etc...⁷²⁰

Mulera's comment contains elements of the international discourse on corruption, which focuses a great deal on "African" corruption. Mulera goes on to say that if only Museveni would ensure that the corrupt are prosecuted, he would have Mulera's vote in the February 2011 elections. Thus, Mulera identifies failure to punish those who have been implicated in corruption scandals as the key reason he will not vote for the NRM. One of the participants in the FGD for non-elites said, "If the president eliminated corruption, he would rule forever and ever!" implying that the failure to eliminate corruption will be the main cause of Museveni's downfall.

Ordinary people view the regime as callous and insensitive to the plight of the poor, and are aware of the fact that corruption hinders the realisation of their human rights, as revealed by various comments in the FGD with urban poor people:

If those choppers had come in time and in the quality that was required, Kony would have killed less people. He (Salim Saleh) "ate" the money for the choppers and we can blame him for Kony killing more people in the process due to lack of efficient machinery (Musisi, commenting on the Junk Helicopters Inquiry).

⁷²⁰ Mulera, M. K. (2010). Let's deal Mr. President. *The Daily Monitor*. Nation Publications Ltd, Kampala.

These people are keeping the country backward. It hurts me for the children to die. Those people's children are born from outside the country and they even move in air (planes). They have no feelings for our children (Jalia, commenting on the Global Fund Inquiry).

Jalia's comment is pertinent and points to two pressing development issues in Uganda: maternal and child mortality. Her reference to the "moving in planes" is a reference to the revelation that President Museveni's eldest daughter Natasha was transported to Germany aboard the presidential airplane jet to have her second baby.⁷²¹

The comments above show that people are disillusioned with the regime, and the role that inquiries have played in fomenting disillusionment. However, it is important to note that such freedom to express dissatisfaction with the regime is a relatively new phenomenon in Uganda, indeed, one that coincides with the NRM regime and the era of good governance. Ugandans have not always been free to express their disillusionment with the rulers, especially in public forums such as newspapers and blogs.⁷²² Despite this, it may early days yet to celebrate freedom of expression in Uganda, especially given the fact that journalists and other critics of the government have suffered harassment from the Police and other security agencies as discussed in chapter 3.⁷²³ Nonetheless, it would appear that at the very least, a window of opportunity is created for the public to criticise the

⁷²¹ Butcher, Tim (2003) President spends £20,000 so his grandchild can be born in Europe, *The Telegraph*, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/uganda/1443488/President-spends-20000-so-his-grandchild-can-be-born-in-Europe.html>, last accessed 10 November 2010.

⁷²² Commissioners who chaired a commission of inquiry into disappearances under Idi Amin were forced to flee into exile. See Note 499, Chapter 4, above.

⁷²³ See Chapter 3, at 3.5.7 where I discuss media oppression in Uganda.

government regarding its corruption before, during and after inquiry proceedings. In this way, the regime is able not only to legitimate itself as being democratic, it is also able to absorb and diffuse criticism against it and opposition to its rule, and hence to prolong its stay in power. One could say that the government lifts the lid a little to allow some of the steam to rise up and bubble away, thereby lessening the danger of an explosion occurring.⁷²⁴ I will now deal with the issue of how commissions of inquiry help to legitimate the NRM regime as a “good governor.”

6.3 Commissions of inquiry as conditionality compliance mechanisms

Former President of the opposition Democratic Party, Mr. Paul Ssemogerere, says that inquiries are meant to hoodwink the international community. He said:

Mr. Museveni has been carrying out these inquiries not to find the truth. The reason has been to hoodwink the international community.⁷²⁵

We saw in chapter two how the government frequently cites the appointment of commissions of inquiry as evidence of its commitment to anti-corruption in the PRSP conditionality framework. Thus, on the face of it, it may indeed appear that inquiries are meant to hoodwink the international community, especially when one recalls that as soon as the government appointed the global fund inquiry, the Global Fund headquarters in Geneva lifted the ban on grants to Uganda. Indeed, donors expressed their satisfaction

⁷²⁴ Thanks to my supervisor Prof. Paliwala for this metaphor.

⁷²⁵ See Mulumba, B. D. (2004) “Did Sebutinde step in a trap?” *The Monitor*, 22 August 2004.

with the steps taken by President Museveni. Said Richard Feachem, the Executive Director of the Global Fund:

The openness and thoroughness with which President Museveni addressed the Global Fund's concerns about the management of the grants it finances in Uganda has shown an example for how allegations of corruption should be dealt with. By conducting a public inquiry under the competent leadership of Justice James Ogoola, Uganda has given a clear message that the abuse of money meant for those suffering the consequences of malaria and AIDS is unacceptable.⁷²⁶

However, it seems naive to assert that inquiries are meant to hoodwink the international community; it is an over-simplification of the complexity of international relations in general, aid donor-recipient relationships as a whole, and in particular, Uganda's relationship with her aid donors. Despite the appearances, I do not think that the international community is hoodwinked by the appointment of commissions of inquiry. In chapter 2, we saw donors' exasperation with the government for not implementing the recommendations of commissions of inquiry, which has frequently been the subject of donor-government dialogue. Despite such exasperation however, we must remember that for many years, donors voiced their dissatisfaction but never actually reduced development aid to Uganda for its failure to comply with conditionality. The non-enforcement of conditionality is largely due to self interest – the career dilemma, strategic interests and the war on terror.

⁷²⁶ Quoted in *The New Vision*, 3 June 2006, available at <http://allafrica.com/stories/printable/200606050703.html>, last accessed 13 February 2011.

Due to the above factors, it would be short-sighted to assume that the donors are genuinely concerned when conditionality is breached through the non-implementation of inquiry recommendations. This is a fact many Ugandans are aware of, and recent attempts to enforce conditionality have met with scepticism. The comments posted below an online news article about a threat by donors to cut aid because of corruption illustrate this:

Barking dogs: Donors just speak to show they are tough. Even after a stolen election victory they will just endorse the “winner” as long as they s/he can guarantee their own interests. Ugandans should not wait for donors to fight our own war against government corruption. We should rise up against thieves and make their lives hell. The press should be relentless in exposing the robbers of our national wealth. The population should deny a vote to those who steal from the public to enrich their families and clans.⁷²⁷

Keep your money donors: All that is happening in the third world and in particular Uganda, is because donors have failed to see the truth. This money they give failed states has always gone to a few individuals’ pockets. By threatening to put a halt to the money they give us- this has all along been the same song over and over. Elections are rigged but surprisingly they (donors) are the number ones (sic) to say that elections have been free and fair! CHOGM, AIDS and Malaria money should have been an eye-opener. Stop wasting your tax-payers’ money... Keep your money and leave us alone with your corruption. Please donors if you have to give the money manage it yourselves is the only way (sic) otherwise you are wasting your taxpayers earned money.⁷²⁸

⁷²⁷ Comment by Henry F. Mulindwa on The Observer online article “Development Partners Remarks National Budget Workshop 25-26 February 2010,” delivered by Kundhavi Kadiresan, World Bank Country Manager, 03 March 2010, at http://www.observer.ug/index.php?optin=com_content&task=view&id=7514&itemid=59, last accessed 22/02/11.

⁷²⁸ Observer online article on Donors’ statement threatening to cut aid (ibid). Comment posted by Rurangura.

I wonder how long donors call them development partners will take us for granted. If year in year out they send money and it is stolen let them stop at that. Then M7 (Museveni) will run short of funds to run state machinery against opposition. This is not the time for letters but rather action. Fellow Ugandans, do not even be hoodwinked by these donors, I am actually tempted to think they also eat from this corruption.⁷²⁹

Where was the donor group when Museveni stole the votes to assert himself as president? Where were you when he changed the constitution to lift term limits? I'm sure you were busy under dodging with him, as long as he could serve your interests – steal minerals from DR Congo and Sudan. Now what is the matter with corruption? Enjoy your salaries.⁷³⁰

These statements show that Ugandans are aware of donors' hypocrisy when they express dismay about the government's failure to enforce anti-corruption law and policy. Similar statements expressing disaffection with the government's failure to implement the recommendations of commissions of inquiry ring hollow. We saw in chapter two that Uganda is considered an important ally in the war against terror, firstly, as a bulwark against the southward spread of Islamic fundamentalism, and also due to Uganda's involvement on behalf of the US in Somalia. These factors reduce "good governance" to a cat and mouse game, to a drama show. Both the donors and the government know this, hence commissions of inquiry may be looked at as one of the means by which the "catch me if you can" drama unfolds.

⁷²⁹ Ibid., comment by "Mr. Dennis."

⁷³⁰ Ibid., comment by John Mawago.

Therefore, the drama of commissions of inquiry is not just about anti-corruption, but has been used to legitimate the NRM government before the international community as a democratic regime, “a good governor,” consistent with its existing status as a “star-child” and “show-case” success story for the World Bank’s development discourse. Inquiry proceedings, widely broadcast by the media, make a show of complying with various aspects of good governance conditionality, including judicial independence, media freedom, public service reform and so on. The play is not necessarily for the donors per se, whose motives and intentions at any given moment may fluctuate from altruism to self-interest. The “good governance” show is conducted also for the benefit of the tax-payers in the donor countries, a fact which is brought out in international press coverage of Ugandan inquiries⁷³¹, and summarised in this statement by Ugandan donors:

It is becoming increasingly difficult for us, as donors, to explain this (corruption) to our taxpayers at home who currently provide just under half of the Government of Uganda budget.⁷³²

6.4 Commissions of inquiry as “the play of good governance,” in Uganda

Following on from the analysis above, Commissions of inquiry appointed to investigate corruption in Uganda can be viewed as a “game” or “theatre,” a metaphor that some

⁷³¹ See for example, BBC News article on the URA inquiry, “Uganda roots out tax corruption,” Friday 15 March, 2002, at <http://news.bbc.co.uk/1/hi/business/1873529.stm>, last accessed 15 February 2011.

⁷³² Statement of Uganda’s Development Partners on Governance and Anti-Corruption, Consultative Group Meeting Kampala, April 2003; available at <http://www.u4.no/document/showdoc.cfm?id=51>, last accessed 02 December 2010.

scholars have used to analyse inquiry proceedings. In particular, Carlen's metaphor of the "play of governance" is useful in understanding the significance of inquiries in Uganda. Carlen argues that the inherently contradictory nature of the inquiry process, arising from the impossibly Utopian ideal of establishing the truth, shows that it's all about "the play."⁷³³

The metaphor of the theatre as an apt description of the inquiry process is not lost upon Ugandans. Don Wanyama, Chief Sub-editor of *The Daily Monitor* Newspaper, in his blog describes inquiry processes as theatrical productions of entertainment, as a satirical reference to the fact that this is all they ever amount to since nobody is prosecuted as the result of an inquiry:

There is a play showcasing in a theatre called Parliament. It is a comedy, to be precise. The protagonist is a gentleman called Nandala Mafabi⁷³⁴, whose theatrical group is named the Public Accounts Committee. Their latest production that elicits laughter to the point of tears is called *Investigation into the abuse of funds during the Commonwealth Heads of Government Meeting*....That is the comedy showing at Parliament. It would have been a great show and I would have recommended that you go and watch this play. But the problem is that there have been such shows before. The same theatre hosted a play *Investigations into Corruption in the Police Force* and another production titled *Probe into Junk Choppers*. But beyond

⁷³³ See, for example, the Warwick Inquest Group (1985), op. cit; and Carlen (2004) op. cit., at p.273.

⁷³⁴ Nandala Mafabi, a member of the opposition Forum for Democratic Change, was the most recent Chair of the Public Accounts Committee. Uganda has just been through Parliamentary Elections in February 2011 and a new Chair is awaited.

bringing into prominence an actress called Julia (Sebutinde), there have been no tangible lessons...⁷³⁵

Similarly, political commentator and journalist Joachim Buwembo used the metaphor of theatre to describe commissions of inquiry in Uganda. Talking about the “boring” inquiry into the closure of Commercial Banks, he observed:

If Minister (of Finance) Ssendaula can’t take his boring acts off the stage, the snoring from the audience might bring the theatre roof down. Why bother anyway? Everyone knows that commission of inquiry reports are never acted upon and are left to gather dust. The least the Ministers can do for the abused public is to select more interesting subjects for the commissions at least. Ssendaula has under him the Uganda Revenue Authority for example. Why can’t he entertain the poor tax payers with that?⁷³⁶

The play has various themes, actors and actresses, for example, Don Wanyama points out that Justice Sebutinde is the “chief actress” in the play of “good governance,” whose themes involve the key tenets of good governance discourse, such as judicial independence, media freedom, civic participation, electoral democracy and so on. The purpose of the play is to further legitimate the State as a “good governor,” as a regime that is committed to accountability and transparency, judicial independence, media freedom and so on.

⁷³⁵ Wanyama, D. (2010) “If you love Bi-Nigeria, then go watch the CHOGM play,” *Daily Monitor Blogs*, at <http://blogs.monitor.co.ug/politics/if-you-love-bi-nigeria-then-go-watch-the-chogm-play/>, last accessed 22 February 2011.

⁷³⁶ Buwembo, J. (2000) “Bankers steal money while boring the public to death,” *The East African*, 30 August 2000. Nation Publications Ltd, Nairobi.

6.4.1 Showcasing judicial independence as part of the play of good governance

Judicial commissions of inquiry provide a unique opportunity to exhibit judicial independence. When judges chair inquiries and become directly involved in investigating governmental wrong-doing as opposed to being mere arbiters in a civil or criminal case where the investigation has been done by other people, it transforms the inquiry into a highly symbolic exercise in horizontal accountability between the different arms of government.

In chapter three I mentioned that a fairly independent judiciary has actively resisted executive power by delivering anti-government judgements, much to the annoyance of the regime. In the same way, independent judges have fearlessly held public officials to account through inquiries. In particular, Justice Sebutinde, who has chaired three inquiries into government corruption (Police, Uganda Revenue Authority, and Junk Helicopters) is regarded by the public as having played an important role in exposing corruption and bringing the government to account, starting with the Police inquiry.⁷³⁷ Casting her as chair of three out of four of the inquiries in this study was significant for a number of reasons. Firstly, it was the first inquiry to be chaired by a woman judge, at a time when Uganda had constitutionalised the principle of affirmative action in 1995 and was seeing a

⁷³⁷ Justice Sebutinde's initial appointment to head the Police inquiry was simply an administrative choice by the Principal Judge. Her relentless cross-examination during this inquiry attracted a lot of attention and she was subsequently chosen to head the Junk Helicopters Inquiry because she had distinguished herself as being able to "dig up the truth." Similarly, she was especially chosen to head the URA inquiry for her fearless cross-examination of public officials.

rise in the number of women holding public office and showing off that it was “gender sensitive” another common parlance in development discourse. For the first time, Lead Counsel for the inquiry was also a woman Maureen Owor, then a Senior State Attorney. On the other hand, Tripp has argued that the appointment of Sebutinde to head inquiries, with Owor as her female Lead Counsel, was in line with the thinking that women leaders were outside mainstream patronage networks and therefore capable of cleaning up excessively corrupt institutions. She quotes a Transparency International report of two studies (by the University of Maryland's IRIS Centre and the World Bank) that show that higher levels of female participation in public life are associated with lower levels of corruption worldwide.⁷³⁸ Popular columnist Charles Onyango Obbo, a Journalist and political commentator with two weekly columns in the *Daily Monitor* and *The East African* newspapers, also picked up on the significance of appointing a female judge to chair the Police inquiry:

The master-stroke in the Sebutinde Commission is the choice to appoint a woman to chair it. It ensured the chair was unlikely to have chummy old boy links to the Police but a total outsider, who brings totally different values to the probe. If the chair had been a man, you would have a cover-up, complete with back-room deals being cut to soft-pedal on some of the boys. And because Sebutinde is well educated, cosmopolitan, holds the high office of Judge, and is beautiful, she has presented the male establishment with a force the boys simply don't know how to deal with.⁷³⁹

⁷³⁸ Tripp, A.M. (2001) “The politics of autonomy and co-optation in Africa: The case of the Uganda Women’s Movement,” *Journal of Modern African Studies* 39(1): 101-128

⁷³⁹ “Ear to the ground,” *The Monitor*, 7 July 1999.

Sebutinde's no-nonsense approach to the conduct of the inquiry, unrelenting cross-examination of witnesses and sometimes abrasive style of addressing witnesses captured the media's and indeed the entire public's attention. As observed by one commentator:

The police had become an absolute nuisance and untouchable. People just thought it (the inquiry) was a waste of time. She just said, 'I don't care who you are. I am a judge and you will answer my questions.' People were amazed.⁷⁴⁰

Sebutinde's candidness with senior government officials including Ministers, was a novel experience in a neo-patrimonial context where government officials, especially Ministers, are highly revered. As Obbo observed:

Sebutinde, a petit, baby-faced combative judge, came to national fame two years ago when she chaired the probe into corruption in the Police force. Sebutinde literally ate police officers for breakfast, and since her report all the top cops she fingered have been disgraced and sent home.⁷⁴¹

Her exploits were reported in the *Christian Science Monitor*, where she was described as "Uganda's answer to corruption: fiery 'Lady Justice.'⁷⁴² She has been described by the media as "Uganda's Probe Queen," and "the most feared judge in Uganda."⁷⁴³ In a news report about her appointment to the United Nations Special Court for Sierra Leone, she was described thus:

⁷⁴⁰ Justice Kiryabwire, speaking to the *Christian Science Monitor* in 2003. See Scheier, R. (2003). "Uganda's answer to corruption: fiery 'Lady Justice'." *Christian Science Monitor*, 7 May 2003, at <http://www.csmonitor.com/2003/0507/p01s04-woaf.html>.

⁷⁴¹ Onyango-Obbo, C. (2001). "It's in their nature: the army simply loves junk." *The East African*. Nairobi, Nation Media Group.

⁷⁴² Scheier, (2003) *Christian Science Monitor*, op. cit.

⁷⁴³ Ibid.

Sebutinde, a 50-year-old mother of two daughters, is one of the better known judges in Uganda especially for her role starting in the late 1990s as the government's judge of choice in the crusade against corruption.... She would subject those testifying before her to withering grilling; reminding them she was a judge whose questions had to be answered fully and truthfully. That abrasive style had many who were facing her squirm in their seats... Her tough as nails show got Ugandans riveted and shocked by some of the revelations of grand larceny that emerged from the probes. Sebutinde became a celebrity, with photo-journalists following her everywhere.⁷⁴⁴

This allusion to Sebutinde's celebrity status reinforces the idea of commissions of inquiry as theatre or drama, and pop culture's preoccupation with celebrity actors and actresses. Indeed, members of the public who participated in both FGDs also had a high regard for Justice Sebutinde and credit her for her personal effort in holding officers accountable for corruption. When asked about their recollections of judicial inquiries, one participant said he could not clearly remember what the inquiries were about, but he had a keen memory of the Lady Justice:

I remember Sebutinde, because she was a tough woman and she even made big men cry. (Clever J., FGD participant)

I remember the police inquiry because of the vehement Chairperson Julie Sebutinde, and her conduct of the whole exercise was smart, professional and well informed. (Namono)

I recall the inquiry into URA because of the chairperson Lady Justice Julia Ssebutinde. She is a high profile judge and she has a reputation for being tough,

⁷⁴⁴ Muyita, S. (2005). Sebutinde takes tough look to Sierra Leone. *The Monitor*. Kampala

and I actually recall that she was very tough on the people who appeared before the commission. I do not remember much else from that commission... (Sheila)

I must admit that the Commission of inquiry into the URA stands out among them all. The personality of the Chairperson Lady Justice Julia Ssebutinde was one issue, her fiery take on issues and apparent miscarriage of the process of law cobbled together a feast for media houses. (Apio)

It was the first time I heard about Justice Sebutinde and I was amazed at how she was able to get confessions from the officials, after they had pleaded innocent at first. (Filda)

The police probe chaired by Justice Ssebutinde had a very admirable style, seeing a lady grill the likes of Chris Bakiza with bullish ease! (Nuwagaba)

Thanks to Sebutinde's "style," to this day, public inquiries into corruption, be they judicial or parliamentary, capture the nation's attention in a manner that few other official proceedings do, making them a potent forum for accountability unknown prior to the 1999 Police Inquiry.⁷⁴⁵ Thus, we can conclude that cross-examination of public officials by a Judge showcased "good governance in action" with the theme of judicial independence.

6.4.2 Show-casing media freedom through extensive reportage of inquiry proceedings

⁷⁴⁵ Justice Ogoola is known to have a less confrontational approach to chairing inquiries than Sebutinde's "abrasive" style. See columnist Joachim Buwembo's piece in which he juxtaposes the Sebutinde Police inquiry with the Ogoola inquiry into the closure of banks: "Bankers steal money while boring the public to death," *The East African*, 30 August 2000. Indeed, it was not surprising that he was chosen to chair the Global Fund Inquiry rather than have a repeat of Justice Sebutinde, whose "abrasive" style had escalated during the URA inquiry and had led to the nullification of the report by the High Court.

Inquiries provide an opportunity to exhibit that the media is free, through allowing extensive coverage and analysis of inquiry proceedings in the media. Media freedom is one of the tenets of good governance, as discussed in chapters 2 and 3.

As mentioned earlier, the ability to name and shame public officials in such extensively publicised proceedings was a new development in Ugandan public life. The freedom of journalists and others to criticise the government for its failures is also a relatively new and significant development. Hence judicial inquiries constitute or embody an intense democratic moment in Uganda, where the public, participating by watching, following and commenting on the inquiry; have been able to call public officials to account for their actions, to exercise their right to participate in government, as well as their right to freedom of expression and freedom of the media.

In Chapter 3, we saw that the independent media has played a role in anti-corruption in Uganda, particularly in the creation of scandal and matters of public outcry that necessitate a Commission of Inquiry. In addition, the media plays a crucial role in relaying inquiry proceedings to the general public. It facilitates debate on the process, findings and recommendations of inquiries through radio call-in talk shows, letters to the editor, and articles by a number of columnists. In recent years, debate has also been facilitated by the introduction of on-line versions of newspapers, where the public can post comments on articles as well as chat rooms hosted by various media houses. All the leading newspapers and magazines in Uganda - the *New Vision*, *The Daily Monitor*, *The Independent* and *The*

Weekly Observer have online versions. The New Vision hosts a chat room called the discussion board where members of the public can discuss and debate political issues including corruption. *The Weekly Observer*, *The Independent* and *The Daily Monitor* have facilities for posting comments below news articles in addition to opinion pieces by respected political commentators such as Charles Onyango Obbo, Andrew Mwenda, Ibrahim Ssemujju Nganda and various others. The introduction of web versions of newspapers has gone hand in hand with the introduction of easy to access archives of new articles going several years back. This explosion of information has had numerous implications for the significance of inquiries in Uganda's governance process.

Firstly, beginning with the Sebutinde Police inquiry, the media greatly enhanced the "publicness" of inquiries, making them a national item of mass consumption. The 1999 Police Inquiry was remarkable and memorable because it started a hitherto unprecedented interest in covering corruption-related matters by the Ugandan media. It marked a watershed because of the amount of media attention it commanded, with daily coverage every day for the entire length of the proceedings which went on for nearly a year. Thus begun a trend of sensational and headline-grabbing coverage of inquiry proceedings which continues to this day. Previous inquiries such as the 1986 one into human rights violations had been broadcast by the media, but at that time there was only one state owned television channel which broadcast only to Kampala and a few other major towns. There were only two major newspapers, one of which (*The New Vision*) was government owned

and the other, (*The Weekly Topic*) was privately owned. Similarly, the radio airwaves were completely dominated by the state-owned radio Uganda.

This has ensured that inquiries serve as a forum for transparency and accountability where governmental wrong-doing is exposed and public officials are named and shamed. The existence of privately owned media enables the leaking of information to journalists, as happened with the helicopter inquiry report which the government refused to publish but which was then leaked to the privately owned Monitor newspaper. In addition, the media has enabled the creation of a public memory of inquiry proceedings and reports as journalists and members of the public continually refer to past inquiries to interpret current events. This has rendered futile the government's unwillingness to publish inquiry reports.

As I discussed above, because of the chair, Justice Sebutinde, the Police Inquiry was able to capture the public's attention while others registered a mere bleep on the country's radar. A look at Appendix 1 shows that there were a good number of inquiries from the time the NRM took power in 1986 up until 1999 when the Police Inquiry was commissioned. The growth and expansion of the media can only partly explain why, beginning with the Police Inquiry, inquiries became a key item on the national agenda. Looking at the other inquiries appointed during this time, I opine that that there were two other factors that made a difference – firstly, the subject matter of inquiry; and second, Justice Sebutinde's approach to the inquiry. With regard to the subject matter, although the 1999 Police Inquiry was not the first into corruption and abuse of office under the

NRM government, it received a lot of media attention because of the nature of the institution – a nationwide institution with close links to the whole population, one that young and old, rural and urban, poor and elite could relate to. Other inquiries that occurred during the same period were into particular state-run enterprises or Local Government Councils and therefore did not have as much national appeal as the Police Force. The media turned the Police inquiry into a key item on the national agenda because it was of interest to the entire population of Uganda. This was further enhanced by the fact that the inquiry conducted hearings in various towns all over the country and did not just limit itself to the capital, Kampala.

The confrontational style of the Chairperson, Justice Sebutinde, to questioning witnesses, had the entire nation riveted to their seats, as I have demonstrated above. This ensured that the inquiries made headline news every day. In this way, the government was able to demonstrate not only that it could tolerate the public interrogation of senior officials, but also allow for the process to be widely reported by the media. As mentioned above, this strategy is not just for the local media, but also allows the international media to report on what is going on in Uganda and therefore show that taxpayers' money that goes into funding the aid industry is being well spent.

6.4.3 The Ugandan public: spectators or co-producers?

What is the role of the Ugandan public in this game or theatrical production? I suggest that they are not passive spectators, but participate in its reproduction by talking about it. We

saw above that as a part of and as a result of commissions of inquiry, there is a vibrant ongoing discourse about corruption in Uganda, a discourse which has been enabled and informed by the daily media coverage of inquiry proceedings over many years. This reiterates my previous argument that the process of the inquiry is more important than the outcome. The proceedings are the most memorable part of the inquiry anyway, since not only are the recommendations not binding, but also because the formal reports are not usually published, and even if they were, are usually complicated and voluminous and not suited for mass consumption. As seen from the respondents' views, what is most memorable about inquiries is the cross-examination process, especially when it degenerates into name-calling and accusations of guilt as happened in the case of Sebutinde's examination of Minister Nsadhu in the police inquiry, and Justice Ogoola's exchange with Jim Muhwezi about statesmanship and patriotism.

Ugandans' discussion about corruption arising from inquiries shows that they have been intentionally or unintentionally co-opted into the "good-governance" discourse through the institution of commissions of inquiry. However, the vibrancy of the discourse, vis-a-vis the fact it has not brought about any significant changes in anti-corruption, is a further reflection of the inherent contradictions of "good governance," revealed in its potential both to promote and to hinder anti-corruption. The discourse has promoted good governance by promoting awareness of bad governance and its effects, but corresponding impact regarding actually bringing about positive changes in governance has not matched the rhetoric. Thus, the impact of good governance discourse in Uganda has been to

reproduce itself continually, from the PRSPs to the commissions of inquiry and thence to the media and popular culture, ultimately retaining and reinforcing the relationships of power that produce and perpetuate it.

On the other hand, the participation of Ugandan citizens in this manner can be regarded in a more positive light, by contrasting it with periods in Uganda's history when it was unheard of for public officials to be publicly interrogated in such a manner. In this way it can also be regarded as the beginning or foundation of Ugandans' asserting their right to transparent and accountable government.

6.5 Commissions of inquiry and the preservation of the patronage system

Indeed, that inquiries merely reproduce and perpetuate the power relationships that give birth to them can be seen from the fact that the NRM government has used commissions of inquiry to consolidate its rule in Uganda. We saw in chapter five that following the Sebutinde inquiry, the Police Force underwent a major restructuring and reorganisation exercise which transformed its main role from one of keeping law and order to that of maintaining the NRM regime in power. We also saw that with regard to the URA inquiry, one of the most significant outcomes was the ascent of Mrs. Allen Kagina, who is from the President's ethnic group and even home village, to head the tax body.

Another important aspect of using inquiries as a power maintenance strategy is that they are used to obfuscate or delay concrete action against corruption, that is to say, prosecution. The government has been adept at deflecting the findings of inquiries through what I have named the “vicious cycle of investigation,” that is, investigations that simply lead to other investigations with no closure. This is typified by the Global Fund Inquiry, which was itself based on investigations by PwC and the Auditor General, and is currently being re-investigated by the Criminal Investigations department with assistance from the UK SFO. As former Lead Counsel to the Global Fund Inquiry put it:

Why are they spending so much time re-investigating? I would say there was sufficient evidence of fraud in most of the cases. There is no need to investigate each case thoroughly. It would be sufficient if culprits could be got on at least one offence; that would still be significant. At this rate some of those implicated could leave the country because investigations have been very slow.⁷⁴⁶

While it may be true that the government deliberately forestalls investigations in order to undermine anti-corruption, it is important to acknowledge the difficulty of compiling evidence that would be sufficient to discharge the burden of proof beyond a reasonable doubt that is required in a criminal case. As one of the respondents, formerly a staff of the Police Inquiry and now the head of one of the donor anti-corruption projects put it:

The challenge facing COIs and anti-corruption in Uganda generally is the information deficit. The inadequate births and deaths registration, proper addresses,

⁷⁴⁶ This statement, while valid, also points to the nature of legality, and the importance that it places on “proof” or evidence; which can be difficult to marshal in corruption cases. Corruption in the circumstances of the Global Fund Inquiry was evidently a “syndicate” crime, which makes discharging the burden of proof even more difficult, as those involved can cover one another’s tracks.

national IDs etc makes it easy for people to hide assets and even to hide from the law if need be. For example, the Police Inquiry was greatly helped by witnesses who were everyday people, because the police closely interact with civil society and the corrupt wrongdoers could be pointed out. COIs are demanded for by donors because of their credibility. The justice system is weak and has many loop-holes... you are only as strong as your weakest link...⁷⁴⁷

One of the State Attorneys working on Global Fund files put it thus:

The cases are complex and keep expanding. Investigation may reveal various aspects and this is time consuming and worsens delays in getting the cases to court. Other challenges include the fact that witnesses are uncooperative. I do not know whether they are being intimidated or bought off, but they are unwilling to come and testify. They switch off their mobile phones. We might be forced to compel them to attend through arrest warrants.

Former Lead Counsel to the Global Fund Inquiry also admitted the problem of proving corruption cases:

Forensic investigations in this country are hampered by the lack of sufficient records. For example, in the DFCU global fund forex scandal, the firm involved would withdraw cash. This would have been very difficult to trace if there had not been an insider whistleblower who told us exactly what to look for. Due to the nature of record keeping, the fight against corruption still relies heavily on whistle blowers. This is why they need protection.

⁷⁴⁷ Personal interview, 18 July 2009. Whereas this statement is true to a certain extent, politics remains a crucial factor in the detection and punishment of corruption, even in developed countries with much more efficient criminal justice systems. A good example is the difficulty in prosecuting BAE for its role in various corruption scandals, discussed in chapter 2. After more than 5 years since the case first came to light, BAE has been able to get off with a fine. See David Leigh, Bob Evans and Mark Tran, "BAE pays fines of £285m over arms deal corruption claims," *The Guardian*, Friday 5 February 2010, at <http://www.guardian.co.uk/world/2010/feb/05/bae-admits-bribery-saudi-yamamah>

As pointed out by the respondents and discussed in chapter 3, there are many challenges to prosecuting corrupt officials in Uganda. Poor record keeping makes it difficult to establish the paper trail that would prove corruption. Lack of births and deaths registration allows for identity fraud that easily enables corrupt officials to escape justice. Proof from whistleblower witnesses may assist inquiry investigations but such witnesses may be unwilling to testify before a formal court hearing. They may face threats to their lives, family and property, due to the insufficient culture of rule of law as well as significant vestiges of authoritarian military rule that continue in Uganda. Thus, while it is true to a large extent that there has been no political will in prosecuting those implicated by inquiries, it is more complex than that because in many cases, there is indeed no sufficient evidence to uphold a criminal charge.

In any case, the endless cycle of investigations promotes impunity and shows how the government uses commissions of inquiries as a political strategy for regime consolidation. Indeed, one could say that the government, aware that prosecution is unlikely to succeed, uses commissions of inquiry as a compromise between not doing anything at all, which would be bad for its image, or doing something that would still ensure the survival of its patronage system.

The strategy appears to have worked to a certain extent, as shown by the fact that despite the many corruption scandals, a recent opinion poll by the Daily Monitor and the

Donor/NGO Deepening Democracy Programme showed that 68% of Ugandans are generally satisfied with the manner in which Museveni has led the country over the past 24 years, even though they think he should retire as soon as possible.⁷⁴⁸ Similarly, a study by the Anti-Corruption Coalition of Uganda (ACCU) in their Fame and Shame book showed the same contradictory results, Museveni “famed” by respondents for his role in anti-corruption policy but simultaneously “shamed” by a number of them for reappointing censured Ministers and inaction against those implicated in corruption scandals.⁷⁴⁹ This kind of contradiction shows the NRM’s cunning approach to anti-corruption policy and its ability to walk the tight rope of appearing to do something about corruption whilst ultimately doing nothing.

The contradictions in anti-corruption, necessitated by the need to appear to be doing something whilst protecting the patronage system are also evident in people’s attitudes towards people implicated in corruption scandals. For example, while Salim Saleh who was blamed for the junk helicopters scandal may be derided by some, he is still regarded by many as a hero and a man of the people. As reported in *The New Vision* when he was appointed to cabinet in 2006:

It was matter of time for Gen. Caleb Akandwanaho aka Salim Saleh to join Cabinet... Although sometimes at the centre of scandals leading to inquiries, he has always sailed ashore. His non-bossy grassroots politics, in many cases posturing as

⁷⁴⁸ Ochieng, H. (2010). 68% want Museveni to retire in 2011. *The Daily Monitor*. Kampala

⁷⁴⁹ ACCU (2009). *Book of Fame and Shame*, Anti-Corruption Coalition of Uganda.

a pro-poor man and liberator has endeared him to the people and thus recruited supporters for the NRM.⁷⁵⁰

Even the Daily Monitor, a privately owned newspaper usually critical of the NRM, acknowledges Saleh's popularity, describing him as a "generally likeable person known to be popular with the common man and the rank and file in the army."⁷⁵¹ Charles Onyango Obbo, journalist, columnist and formerly a political commentator on Uganda's Capital Gang Radio Talk Show hosted by 91.3 Capital FM, also castigates Saleh for his role in corruption scandals, whilst simultaneously acknowledging his likeability and popularity.⁷⁵² Thus, Saleh's complex hero-villain personae is the epitome of the contradictions of anti-corruption policy in Uganda..

Even Jim Muhwezi, who was Minister for health at the time of the global fund scandal is highly regarded, especially by his constituents in Rujumbura County for which he has been MP since 1996. During the Global Fund Inquiry proceedings, the Uganda Herbalists and Traditional Healers Association issued a press statement in his defence, saying he had done a lot for the country and should be treated fairly.⁷⁵³ When he was arrested in 2007 for his involvement in the misappropriation of GAVI funds, his constituents sent a delegation

⁷⁵⁰ *The New Vision*, Tuesday 23 May 2006

⁷⁵¹ "Who is General Saleh?" Editorial, *The Monitor*, 2006

⁷⁵² Onyango-Obbo, C. (1998). "Vacancy; Only Thieves Need Apply." *The Monitor*. Kampala, Monitor Publications Ltd.

⁷⁵³ Kiwawulo, C. (2005). "Local healers Defend Muhwezi." *The New Vision*. Kampala, The New Vision Publications Ltd

of elders to see the President at State House so as to plead for his release. One of the respondents to this study is a member of the constituency and put it thus:

Jim is well liked and highly respected because he cares for his people. He attends our funerals, has built us a school and contributes to all our fundraising efforts.

It was reported in the news that when Muhwezi recently announced that he was going to quit politics in 2011, some of his constituents shed tears and he reassured them saying “I know you like me very much for what I have done for you... but I will not keep very far from you even if I am not an MP.”⁷⁵⁴ Muhwezi has since reneged on his statement and was re-elected this year. The incident illustrates the point that the government can risk airing its dirty linen in public through an inquiry, because it has a limited, if any, impact on the support and loyalty of the rural voters who are the majority. We saw in chapter 3 that corruption *is* accountability, because a significant portion of stolen funds is spent on extending personal generosity to individuals or the community. These acts of personal generosity legitimate corruption and enable Salim Saleh and Jim Muhwezi to be positively regarded by their constituents and to escape being prosecuted despite being implicated in corruption by inquiries. Thus, commissions of inquiry play a crucial role in the symbolic approach to anti-corruption that preserves the patronage system.

⁷⁵⁴ Bahikaho, C. (2008). “Muhwezi to quit Politics,” *The New Vision*, Wednesday 2 January 2008, at <http://newvision.co.ug/D/8/18/604640/Jim%20Muhwezi>, last accessed 31 March 2011.

The analysis so far reveals that the NRM regime is the winner in the political game/strategy of symbolic anti-corruption. However, it is important to emphasise some of the positive factors that emerge from the study. Despite the prognosis, the findings can be interpreted to emphasise that commissions of inquiry have sown the seeds for more democratic and accountable governance in Uganda.

6.6 Commissions of inquiry, accountability and resistance

The discussion so far paints a negative picture of anti-corruption and governance in Uganda, and risks falling into the trap of “afro-pessimism.” Despite the fact that the NRM is the apparent winner in the political games that are being played, there are spaces within the political space for resistance and the struggle for more accountable governance in Uganda. Indeed, one of the short-comings of the neo-patrimonial theory that I have used to explain why the Uganda government subverts anti-corruption, is that does not adequately account for the portion of the population that is not strongly linked to the patronage and clientelistic networks. These include the professional elite, especially journalists, lawyers, judges, academics and many other professionals in various disciplines who are employed in the private sector, particularly banking and telecommunications that have greatly expanded with the advent of neo-liberal economic policies. It also includes a small corps of professional “development workers” employed in the NGO sector, who have taken up the mandate of “civil society” to criticise the government and lobby and advocate for better governance. Even more numerically and politically significant are the young people who have benefitted from Universal Primary Education, have been unable to complete

their education, and are mostly unemployed or self-employed in the informal sector in urban areas as Taxi and boda-boda drivers and conductors, hair-dressers or petty traders who constituted one of my FGDs. Many members of these groups are not directly beholden to the ruling elite and are becoming more politically astute and aware, and therefore able to directly and indirectly resist and oppose “bad governance.” Indeed, Mwenda observes that:

Our country enjoys a rare paradox. On one hand, (the) President seems to have centralized and personalized power at State House. Nothing of significance happens in this country without the president’s personal involvement. Yet on the other hand, power is also distributed among diffuse fragments of our political structure.⁷⁵⁵

While Erdmann, one of the proponents of neo-patrimonial theory, acknowledges that neo-patrimonial power “does not take exclusive control over the legal-rational logic” he does not elaborate on how legal rational logic survives under the sway of neo-patrimonial forces. I suggest that the good governance agenda has played a significant role in “path-breaking,” by providing spaces for legal-rationality to carry the day on some occasions. It is because of the good governance agenda that there is a relatively free media and academy, a fairly independent judiciary, a growing body of un-co-opted professional elites, semi-literate urban dwellers employed in the informal sector and similar groups who can and do demand transparency and accountability from the government.

⁷⁵⁵ Mwenda, A. (2008). “Let us Liberalise Social Security,” *The Independent*, Wednesday 10 September 2008, at <http://www.independent.co.ug/index.php/the-last-word/3-the-last-word/160-let-us-liberalise-social-security?format=pdf>

Hence I propose that when viewed within the larger political, economic and social context, Commissions of Inquiry constitute or embody an intense democratic moment in Uganda, where the public, participating passively by watching, following and commenting on the inquiry; and actively through the judge chairing the inquiry, are able to call public officials to account for their actions, to exercise their right to participate in government, as well as their right to freedom of expression and freedom of the media. The phenomenon of commissions of inquiry as democratic moments therefore enables us to view them not just as cunning political strategies for regime consolidation; but as sites for resistance that have played a key role in the struggle for democracy, accountability and the rule of law in Uganda. This is especially pertinent when we recall from chapter 4, that the enduring popularity of commissions of inquiry is, in part, due to their ability to serve as a form of “truth as justice.”⁷⁵⁶ It has also been emphasised that the ability to name and shame public officials in such extensively publicised proceedings was a new phenomenon in Ugandan public life and therefore a significant development.

Commissions of inquiry have provided confirmation of corruption in the regime, which has left a stain on the NRM’s legacy and proved to be a rallying point for those opposed to it. Indeed, in the 2006 and 2001 elections, many of the Opposition Candidates’ Manifestos cited the corruption of the NRM as one of the main reasons why they should be voted out of power. The Uganda People’s Congress Party Manifesto of 2006 says:

⁷⁵⁶ See Chapter 4, at 224 et seq..

Under the NRM, Uganda has been consistently ranked among the 15 most corrupt countries out of a total of 145 worldwide, scoring less than 3 out of possible 10 points under the Corruption Perception Index (CPI) by the renowned Transparency International. In Uganda today, corruption is a cause of frustration to potential investors; obstacle to sustainable development and economic growth; a cause of loss of public funds needed to provide social services such as education and health etc. and an additional cost for doing business. Some reports of the numerous commissions of inquiry into cases of corruption have not been published, and the recommendations of those that have been published have either not been acted upon or have been used to victimise certain individuals.⁷⁵⁷

In the same vein, the following excerpts from Dr. Besigye's Manifesto further illustrate the centrality of corruption to resistance efforts:

For 25 years under the current Government hope has been lost and the challenges we face are immense. Our public sector is overwhelmed by misuse of public resources, our social fabric is shattered. The political system and politicians have all betrayed the people and the cause they intended to serve.... For 25 years public funds have stolen by some leaders of NRM. The government has nurtured corruption as a way of life in Uganda. It has now reached alarming levels in the public sector and yet those who steal public funds are unpunished and even promoted.⁷⁵⁸

Similarly, the Democratic Party Manifesto appears to take cognisance of the public's disillusionment with the result of Commissions of Inquiry by promising:

⁷⁵⁷ UPC Manifesto 2006, available at <http://www.upcparty.net/manifesto/UPC2006Manifesto.pdf>, last accessed 30 March 2011.

⁷⁵⁸ Forum for Democratic Change (FDC) Manifesto 2011-2016, available at <http://www.kizzabesigye.org/manifesto%20final%20website2.pdf>, last accessed 07 April 2011.

We will undertake legal reform to ensure that any public official charged of corruption is immediately relieved of their responsibilities and interdicted till the case is fully determined and once convicted dismissed and assets sold to recover public funds.⁷⁵⁹

Aside from opposition politics, elements of popular resistance can also be gleaned from the songs and plays that decry corruption by various Ugandan artists, already discussed in Chapter 3. Furthermore, Ugandans who criticise the regime for its anti-corruption failure, writing about various aspects of corruption on their blogs or on facebook are “cyber-dissidents” engaging in resistance.⁷⁶⁰ Inquiries have provided the confirmation – the facts, that the regime is corrupt.

We can see therefore that inquiries, even though intended by the government as a regime consolidation tool, have turned into subversive instruments by enabling anti-corruption discourse that encapsulates resistance towards the regime. The NRM may have instituted them for politically symbolic reasons hoping to temporarily assuage public disquiet, but the strategy has not worked in the long term. The failure to implement inquiry recommendations by failing to prosecute the culprits has itself become a core factor in delegitimizing the regime and has become a rallying point for the opposition and its sympathisers. Accordingly, even though there has been limited success with criminal prosecutions for corruption, the highly publicised process of inquiry has been one of the

⁷⁵⁹ See Democratic Party Manifesto, available at <http://www.norbertmao.org/downloads/DPManifesto2011.pdf>, last accessed 07 April 2011.

⁷⁶⁰ See Chapter 3, at p. 131 for a discussion on such people.

ways through which norms and practices that encourage corruption are challenged and devalued, hence allowing the internalisation of anti-corruption norms and values.

Inquiries as sites for resistance has been made possible not so much by inquiry reports, which are not widely disseminated, as by the highly publicised process of cross-examining public officials involved in corruption. Justice Sebutinde's "withering" and "abrasive" style, admired by some and reviled by others, is the essence by which the Ugandan public expresses its disapproval of corrupt and unaccountable government.

Chapter 7

Conclusion

Commissions of inquiry in Uganda have played a complex and multi-faceted role. They have been used to legitimate the NRM government as a "good governor" within the context of international development discourse. On the domestic scene, they have legitimated the NRM as a government that is tolerant of criticism, and therefore different from past tyrannical regimes. Nevertheless, they have also served as sites for the people, acting through the media and the judiciary, to express resistance towards corrupt and unaccountable leadership.

7.1 Commissions of inquiry: multifaceted tools of governance

In chapter two, it was argued that global anti-corruption policy, despite its high sounding ideals, falls short of its stated aims mainly due to the failure to enforce good governance conditionality. The proliferation of inquiries into corruption in Uganda from the late 1990s to the present is part of Uganda's on-going democratic transition and the manifestation and result of the implementation of good governance in Uganda during this period. From the mid 1990s, revelations of grand corruption in Uganda's privatisation process threatened to undo its rosy international image as a post-conflict economic recovery success story. Commissions of inquiry then came on to the scene as a political strategy, not only to deflect attention away from this embarrassing issue, but also as a way of showing off the NRM's democratic credentials in a situation where the continued ban on political party activity was raising eyebrows amongst the donor community. Commissions of inquiry were an ideal way to do this because they encapsulate the ideals of good governance - judicial independence, participation, transparency and accountability - in one process and institution.

Although donors have since expressed dissatisfaction with the failure to implement the recommendations of commissions of inquiry, it would be naive to assume that they expected a more successful outcome than that which has come to pass. After all, we saw in chapter two that they have other interests to protect, particularly, geo-strategic alliances in the war against terror. Despite rhetoric about cutting aid due to failure to implement the recommendations of inquiries, it is possible to speculate that the Uganda government still receives significant amounts of aid, especially from the US government, because of its

role in Somalia, where it is keeping the peace and fighting on behalf of the USA. When one considers the fact that defence accounts remain outside the jurisdiction of anti-corruption agencies such as the Auditor General, then the speculation that the threat to cut aid is mere rhetoric becomes more pertinent. Thus, as a symbolic response to anti-corruption, inquiries flow from this contradiction in international anti-corruption policy.

In chapter three, we saw that the contradictions in global anti-corruption spill over onto the domestic scene, where the government of Uganda has mastered the art of “being a good governor without undermining its support base.” Uganda’s local power base is based on a system of patronage and clientelism, a cheap and convenient way of harnessing ethnically fragmented constituencies. Through this system, the majority of the elite have been co-opted into the regime and are co-conspirators in the execution or cover up of corrupt deals. In this way, the government has been able to maintain an anti-corruption framework which is “near perfect” and yet undermine it in so many ways as to render it impotent.

The government justifies inquiries as an attempt to bridge the gap between anti-corruption policy and practice, “particularly where the situation is not amenable to conventional methods of audit and investigation.” However, when the recommendations to prosecute the culprits are not implemented, inquiries then turn out to be a mere extension of the strategy of having a “near perfect” institution, which is nevertheless impotent to deal with corruption. I suggest that the government was able to pursue this glaringly hypocritical

strategy because it was confident of its domestic support base, where most of the elites are directly or indirectly co-opted into the patronage system and civil society is weak and disorganised. Dissenting voices such as those of respondents to this study constitute an electorally insignificant minority. The insignificance of anti-corruption is revealed in the fact that key figures in corruption scandals such as Gen. Salim Saleh and Brig. Jim Muhwezi have retained their political positions and have never been punished. Because “corruption is the glue that holds the coalition together” and enforcement would be inimical to regime survival, commissions of inquiry prove to be an ideal solution to the dilemma of being a good governor and a powerful patron.

Commissions of inquiry are the ideal mechanism to bridge the gap between anti-corruption rhetoric and practice because of their institutional structure. In Chapter 4 we saw that as quasi-judicial bodies that utilise a public inquisitorial process to establish facts and make non-binding recommendations, they have for a long time, been attractive to governments all over the world as tools of legitimation following crises in governance. The public too, is enamoured by them because they are able to participate actively in a process of accountability where the State is put on trial. I looked at various theories that have emerged regarding the role of inquiries, and agreed with the most recent scholarship which casts inquiries as devices for political legitimation. In Uganda, an aid-dependent developing country, the qualities of commissions of inquiry render them an ideal legitimation tool which can showcase good governance without compromising its corruption-reliant support base.

Hence in chapter five, we saw how the Uganda government used four commissions of inquiry, appointed between 1999-2005, to show off that it was a “good governor.” This was done mainly through the ensuing show of public accountability, democratic practice, judicial independence and media freedom that went hand-in-hand with these commissions of inquiry. The police inquiry was pertinent because it redefined commissions of inquiry from mundane governmental processes in which few people were interested, into national items of mass consumption via the news media, thanks mainly to Justice Sebutinde’s no-nonsense approach to cross examining public officials.

In chapter five, we saw that most of the respondents regard inquiries as useless public relation stunts. Yet, this view appears simplistic when one takes other factors into consideration. Accordingly, I suggested that the unstated political purpose of inquiries is to legitimate the NRM government as a “good governor,” that tolerates public criticism and allows for an independent judiciary and a free media. However, the government’s winning strategy is being able to do this and whilst ensuring that key members of its patronage power structure will not face successful prosecution as the result of the findings of a commission of inquiry. In ensuring this, it may rely on underhand methods such as the “vicious cycle of investigation,” greatly aided by the lack of evidence to prove a criminal case of corruption beyond a reasonable doubt. This shows how the law and legal institutions can be easily manipulated to suit the needs of the rulers.

The fact that there have been very few successful prosecutions as a result of the findings of commissions of inquiry shows how they have played a role in reproducing and maintaining the global and local power relationships in which they are birthed. They reproduce the discourse and practice of good governance in a manner that reflects its hypocrisy, inconsistencies and double standards. Yet, one cannot completely write off the good governance project, which has succeeded in an oblique way by creating spaces and opportunities that the Uganda people have and are utilising to participate in democracy and engage in resistance to corrupt and unaccountable government.

7.2 “Going out of style” – the end of the commissions of inquiry era?

*Commissions of inquiry were a “style.” They had become very popular because they are useful for reducing political discontent on certain issues. However, they are going out of style now because the public is becoming disillusioned with them.*⁷⁶¹

From the 2005 inquiry into the mismanagement of the global fund, it has taken a while for the government of Uganda to appoint a commission of inquiry into corruption. The recent appointment of a Commission of Inquiry into the mismanagement of Universal Primary and Secondary Education Funds chaired by Justice Ezekiel Muhanguzi breaks a long spell. This is a definite change from the previous years, where inquiries were the order of the day and there was always one going on; beginning with the Police Inquiry (1999), the

⁷⁶¹ Personal Interview with Head, USAID ACT Project, July 2009.

Junk Helicopters Inquiry(2000), the inquiry into the Closure of Commercial Banks (2001) the URA Inquiry (2002), the Inquiry into UPDF activities in the Congo(2003) and lastly, the Global Fund Inquiry(2005). Whether or not the newly appointed inquiry will have a similar impact to previous ones remains to be seen.

During the dry spell, the Public Accounts Committee of Parliament (PAC) has filled the gap as the institution that has taken the place of commissions of inquiry as the forum where corruption in government is exposed, and where public officials are held accountable for their actions. This is definitely worth further research. It could be argued that the government would prefer that its dirty linen be aired by the PAC than by a commission of inquiry because of several reasons. Firstly, the NRM ruling party can exercise greater control over PAC proceedings and reports because of their parliamentary majority . Indeed, the NRM used this majority to stifle accountability in the National Social Security Fund (NSSF) Temangalo scandal, where the PAC report was altered to exonerate Security Minister and close confidant of President Museveni, Amama Mbabazi. The NRM tried but failed to use the same tactic in the CHOGM matter. Such underhand tactics would be more difficult to implement with an independent judicial inquiry chaired by a judge. Secondly, PAC, as a Standing Committee of Parliament, generally lacks the status and significance that an *ad hoc* commission of inquiry would command. Judges in Uganda are respected by both the public and politicians - for example, no politician called to appear before a judicial inquiry has ever failed to make an appearance, whereas a number of ministers have openly defied summons to appear before PAC and have made

derogatory statements about the status, integrity and qualifications of the PAC members.⁷⁶²

What does the lapse in the appointment of the judicial inquiries signify? It is my opinion that since it is apparent that the Parliamentary Public Accounts Committee has taken over the role previously played by inquiries, we can infer that the latter were used to fill in the accountability gap during the pre-2006 “Movement” era before the return of multi-party politics to Uganda. With the return of multi-party politics, the Opposition in Parliament is supposed to be able to provide some horizontal accountability to the executive, thereby lessening the need for it to be done on an *ad hoc* basis by the judiciary. Indeed, corruption revelations continue to come out of the Auditor General’s reports and the PAC. The latest such revelations concern the misuse of funds and abuse of procurement procedure by various Ministries and Departments for the Commonwealth Heads of State and Government Meeting (CHOGM) which Uganda hosted in late 2007. Many top government officials including President Museveni himself, Vice President Gilbert Bukenya, Foreign Affairs Minister Sam Kutesa and others were implicated in influence peddling. The government attempted to use its parliamentary majority to suppress the report, but these attempts were unsuccessful largely because the Head of PAC is a member

⁷⁶² See for example, Minister for Tourism Sarapio Rukundo who was quoted as saying: “These PAC members are just funny. Really, what wrong did I do? I am not like these beginners who have not worked anywhere. I have a great reputation and these people want to spoil my name just like that;” in David Tash Lumu and Stephen Kibuuka, “Kutesa to sue over CHOGM report,” *The Observer*, Sunday 09 May 2010. Also recall that even President Museveni has testified before the Junk Helicopters inquiry, but has never graced the PAC with his presence.

of the opposition. Indeed, PAC members of the NRM declined to sign the report.⁷⁶³ In any case, the government has not taken any steps to hold those who were implicated accountable; as neither criminal nor disciplinary proceedings have been initiated against any of the officers who were implicated.

The government's inaction over CHOGM has sparked the donors into enforcing conditionality, with donors announcing that they were withholding 80 billion Uganda shillings out of a total of 360 billion of planned joint budget support for the 2010-11 financial year in protest against the lack of concrete government action in respect of the CHOGM report.⁷⁶⁴ To many Ugandans, these actions by the donors are "too little, too late" as these same donors have for many years turned a blind eye to rampant corruption by the NRM government. Moreover, donor funding to the Uganda Government's budget has been steadily decreasing over the years, from over 50% in the late 1990s to about 30% at present. The decrease in donor funding is not necessarily because Uganda is becoming more self-sufficient, but because it has found alternative sources of funding such as China, whose aid has no conditions attached. This may provide an alternative explanation for the apparent decline in accountability implied by the non-appointment of commissions of inquiry over the past few years and is also an area that is worth further research.⁷⁶⁵

⁷⁶³ Anonymous Reporter "Tension as NRM succeeds to block CHOGM report presentation, the Daily Monitor, May 11, 2010. See also Musoke, Cyprian, CHOGM report not on agenda – Kadaga, The New Vision Monday 17th May 2010. It would appear that the report was leaked to the media even before it was tabled before Parliament.

⁷⁶⁴ Mugerwa, Yassin, "Donors want CHOGM officials punished," *The Daily Monitor* 9 May 2010

⁷⁶⁵ See, Guloba, M., N. Kilimani and W. Nabiddo (2010) *The Impact of China-Africa Aid Relations: The Case of Uganda*, Nairobi: Africa Economic Research Consortium, available at <http://www.aercafrica.org/documents/china-africa-policybriefs/UgandaPB10.pdf> See also, "China gives Uganda \$77 million aid to boost development," Xinhua

In any case, the threats to cut aid as well as the cuts themselves have had no impact whatsoever, as no one has been arrested in respect of CHOGM to-date.⁷⁶⁶ It is also plausible that the government is no longer eager to show off its democraticness to the donors because of the fact that Uganda is on the verge of becoming an oil exporting country and will no longer be dependent on foreign aid. Significant reserves of oil have been known to exist in the Western Rift Valley area of Uganda since colonial days, but it is only in the past decade that drilling has begun and it is hoped that exportation will begin in the next couple of years. When this happens, the Uganda government will presumably, no longer be beholden to the donors. This does not bode well for accountability and transparency, but only time will tell.

To sum up, I would say that despite the limitations that have arisen from the failure to implement their recommendations, commissions of inquiry have constituted significant moments in the history of Uganda. They have constituted “good governance in action,” not only by holding government officials to account in a public forum, a completely new phenomenon in Uganda’s post-independence history, but also by exhibiting judicial

News Agency, 14 January 2009, at http://news.xinhuanet.com/english/2009-01/14/content_10653285.htm, last accessed 11 April 2011.

⁷⁶⁶ Mubatsi Asinja Habati (2010) “Hitting Them Where it Hurts?” *The Independent*, 25 August 2010. Ugandans’ disillusionment with donors can be seen in comments made below a newspaper article on this story of aid cuts, where one comment said: “Donors just speak to show they are tough. Even after a stolen election victory they will just endorse the “winner” as long as s/he can guarantee their own interests. Ugandans should not wait for donors for fight our own war against government corruption. We should rise against thieves and make their lives hell.” See Comments below Kibuuka Stephen and Richard M. Kavuma, “Angry Donors Threaten Aid Cut,” *The Observer*, 3 March 2010, at http://www.observer.ug/index.php?option=com_content&task=view&id=7517&Itemid=59, last accessed 28 September 2010..

independence, media freedom and public participation, however contrived it may have seemed. Most important of all, they have provided confirmation of the corruption of the current regime, which in turn has enabled them to act as sites for resistance in the struggle for more accountable government in Uganda.

Bibliography

BOOKS

- Abrahamsen, R. (2000). *Disciplining Democracy: Development Discourse and Good Governance in Africa*, London: Zed Books.
- ACCU (2009). *Book of Fame and Shame*, Kampala: Anti-Corruption Coalition of Uganda.
- Anghie, A. (2004). International financial institutions, in: C. Reus-Smit (ed), *The Politics of International Law*, Cambridge: Cambridge University Press: 217-237
- Arendt, H. (1977) *Between past and future: eight exercises in political thought*, London: Penguin Books, at p.252.
- Baxi, U. (2002). *The Future of Human Rights*, Oxford University Press, New Delhi;
- Bayart, J. F., S. Ellis, et al. (1999), *The Criminalisation of the State in Africa*, Oxford, James Currey.
- Bentham, J. (1838). "Rationale of Judicial Evidence," VI *The Works of Jeremy Bentham* , J. Bowring (ed), p. 354.
- Bose, A. and P. J. Burnell (1991). *Britain's Overseas Aid Since 1979: Between Idealism and Self-interest*, Manchester Univ Press.
- Bratton, M. and N. Van de Walle (1997). *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*, Cambridge University Press.
- Brummett, B. (1993), *Mediating the Laws: Popular Trials and the Mass Media*; in R. Hariman (ed.), *Popular Trials: Rhetoric, Mass Media and the Law*, Tuscaloosa: University of Alabama Press.
- Burchell, G., M. Foucault, et al. (1991). *The Foucault effect: studies in governmentality : with two lectures by and an interview with Michel Foucault*, University of Chicago press.
- Burton, F. and P. Carlen (1979). *Official Discourse: On Discourse Analysis, Government Publications, Ideology and the State*, Routledge & Kegan Paul Books
- Callaghy, T.M. and J. Ravenhill (1993) *Vision, Politics and Structure: Afro-Optimism, Afro-Pessimism or Realism?* in Callaghy T. and J. Ravenhill (eds) *Hemmed in: responses to Africa's economic decline*, Columbia: Columbia University Press
- Cartwright, T. J. (1975). *Royal commissions and departmental committees in Britain: a case-study in institutional adaptiveness and public participation in government*, Hodder and Stoughton, London
- Chabal, P. and Daloz (1999), *Africa Works: Disorder as a Political Instrument*, Oxford, James Curry

- Chandler, D. and G. Baker (2005), *Global civil society: Contested Futures*, Routledge, London.
- Clokie, H. M. and J. W. Robinson (1937). *Royal commissions of inquiry; the significance of investigations in British politics*. London, Stanford University Press.
- Cohen, D.W. and E.S. Atieno Odhiambo, (2004) *The risks of knowledge: investigations into the death of Hon. Minister John Robert Ouko in Kenya*, 1999; Ohio: Ohio University Press.
- Collier, P. (2000). Conditionality, Dependence and Coordination: Three Current Debates in Aid Policy; in *The World Bank: Structure and Policies*. By C. L. Gilbert and D. Vines, (eds). Cambridge, Cambridge University Press.
- Craig D., and D. Potter (2007) *Development Beyond Neo-Liberalism? Governance, Poverty Reduction and the Political Economy*, London: Routledge.
- Crawford, G. (2001). *Foreign aid and political reform: a comparative analysis of democracy assistance and political conditionality*, Palgrave Macmillan
- Crocker, D.A., (2000), Truth commissions, transitional justice, and civil society, in R. Rotberg & D. Thompson (eds), *Truth versus Justice: The Morality of Truth Commissions*, Princeton NJ: Princeton University Press, pp. 99-121
- Edelman, M. (1973), *The Symbolic Uses of Politics*, Illinois: University of Illinois Press.
- Eisenstadt, S. N. (1973), *Traditional Patrimonialism and Modern Neopatrimonialism*, London, Sage Publications.
- Fitzpatrick, P. (2001). *Modernism and the Grounds of Law*, Cambridge: Cambridge University Press
- Flitner, D. Jr., (1986) *The Politics of Presidential Commissions: A Public Policy Perspective*, Transnational Publishers, New York
- Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, Brighton: Harvester Press.
- Foucault, M. (1972) *The Archaeology of Knowledge*, New York, Pantheon.
- Frankel, O. (2006), *States of inquiry : social investigations and print culture in nineteenth-century Britain and the United States*, Baltimore, Johns Hopkins University Press
- Frankel, O. (2006). *States of inquiry: social investigations and print culture in nineteenth-century Britain and the United States*. Baltimore: Johns Hopkins University Press
- Galtung, F. (2000). A Global Network to Curb Corruption: The Experience of Transparency International; in Florini, A. M. (ed) *The Third Force: The Rise of Transnational Civil Society* Washington D.C.: Carnegie Endowment for International Peace Press; 17-47

- Gibson, C. C., K. Andersson, et al. (2005). *The Samaritan's dilemma: the political economy of development aid*, Oxford University Press.
- Gilligan, G. P. and J. Pratt, Eds. (2004). *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge*. Devon, Willan Publishing.
- Glynn, P., S. J. Kobrin, et al. (1997). The globalization of corruption; in K. A. Elloit (ed), *Corruption and the global economy, Institute for International Economics*: 7-27
- Golooba-Mutebi F., (2008), Politics and Local Government in Uganda, in F. Saito (ed) *Foundations for Local Governance: Decentralisation in Comparative Perspective*, Heidelberg: Springer
- Green, P. and T. Ward (2004) *State Crime: Governments, Violence and Corruption*. London, Pluto Press.
- Green, S. (2007), *Lying, Cheating and Stealing: A Moral Theory of White Collar Crime*, Oxford University Press, Oxford.
- Gupta S., H. Davoodi, et al (2001), Corruption and the provision of health care and education services; in: Jain, A.K. (ed). (2001) *The Political Economy of Corruption*, Routledge, London.
- Hancock, N & Liebling, A (2004), Truth, Independence and Effectiveness in Prison Inquiries; in Gilligan. G & Pratt, J (eds). *Crime, Truth and Justice: Official Inquiry, Discourse, Knowledge*, Willan Publishing, Cullompton.
- Hanna, W. and J. Hanna (2009), *Urban dynamics in Black Africa: an interdisciplinary approach*, Aldine De Gruyter, pp. 2-3.
- Harrison, G., (2004) *The World Bank and Africa: The Construction of Governance States*, London: Routledge,
- Heeks, R. (2007) Why Anti-Corruption Initiatives Fail: Technology Transfer And Contextual Collision, In S. Bracking (ed) *Corruption and Development: The Anti-Corruption Campaigns*, London: Palgrave MacMillan.
- Heilbrunn, J. H. (2004). *Anticorruption Commissions: Pancea or Real Medicine to Fight Corruption?* World Bank Institute
- Hills, A. (2001). *Policing in Africa: Internal Security and the Limits of Liberalisation* Boulder, Lynne Rienner Publishers.
- Johnstone, G. (2002). *Restorative justice: ideas, values, debates*. Cullompton, Devon, UK; Portland, Or., Willan Publishing.
- Jones, B. (2009), *Beyond the state in rural Uganda*. Edinburgh, Edinburgh University Press.
- Kagari, M. and E. Edroma (2006). *The Police, the People, the Politics: Police Accountability in Uganda*, Commonwealth Human Rights Initiative.

- Kanbur, R. (2000), Aid, Conditionality and Debt in Africa; in F. Tarp (ed) *Foreign Aid and Development: Lessons Learnt and Directions for the Future*. London, Routledge.
- Kasozi ABK et al, (1994) *The social origins of violence in Uganda, 1964-1985*, McGill-Queen's University Press.
- Keeton, G. (1960). *Trial by Tribunal: A Study of the Development and Functioning of the Tribunal of Inquiry*; Museum Press, London
- Killick, T., R. Gunatilaka & A. Marr (1998). *Conditionality: The Political Economy of Policy Change*, London: Routledge
- Kiss (2000), Moral Ambition within and Beyond Political Constraints: Reflections on Restorative Justice; in Rotberg, I.R & D. Thompson (eds) *Truth V. Justice: The Morality of Truth Commissions*, Princeton: Princeton University Press
- Klotz, A. (1995), *Norms in international relations: The struggle against apartheid*, Cornell University Press.
- M. Bulmer, (1980), *Social Research and Royal Commissions*, London: Allen & Unwin
- Mamdani, M. (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press
- McCombs, M. E. (2004). *Setting the agenda: the mass media and public opinion*. Cambridge: Polity Press
- McCulloch, J. (1995). *Colonial psychiatry and "the African mind,"* Cambridge, Cambridge University Press.
- Meron T. (1989) *Human Rights and Humanitarian Law as Customary Law*, Clarendon Press: Oxford
- Mommsen, W. J. (1989). *The political and social theory of Max Weber: collected essays*. Chicago, University of Chicago Press
- Moyo, D. (2010) *Dead Aid: Why aid is not working and how there is a better way for Africa*, New York : Farrar, Straus and Giroux
- Museveni, Y. K. (1997). *Sowing the Mustard Seed*. London, Macmillan
- Mutibwa, P. (1992), *Uganda since independence: A story of unfulfilled hopes*. London, Hurst & Co.
- Mutibwa, P.M. (1992) *Uganda since independence: a story of unfulfilled hopes*, Trenton NJ: Africa World Press.
- Peachment, A. (2006), *The years of scandal: Commissions of Inquiry in Western Australia, 1991-2004* Crawley: University of Western Australia Press
- Petras, J. F. and H. Veltmeyer (2005). *Social Movements and State Power: Argentina, Brazil, Bolivia, Ecuador*; London: Pluto Press

- Rubongoya, J. B. (2007), *Regime Hegemony in Museveni's Uganda: Pax Musevenica*. New York, Palgrave Macmillan.
- Santos, B. d. S. (2002). *Toward a New Legal Common Sense: Law, Globalisation and Emancipation*. London, Butterworths.
- Shivji, I. and G. Murunga (2009), *Where Is Uhuru?: Reflections on the Struggle for Democracy in Africa*, Pambazuka Press
- Stapenhurst, R. (2000). *The Media's role in curbing corruption*, World Bank Institute
- Tamanaha, B. (2004) *On the rule of law: history, politics, theory*. Cambridge University Press, Cambridge.
- Tamanaha, B. (2006), *Law as a means to an end: threat to the rule of law*, Cambridge: Cambridge University Press
- Tan, C. (2005), The Poverty of Amnesia: PRSPs in the Legacy of Structural Adjustment, in D. Stone and C. Wright, *The World Bank and Governance: A Decade of Reform and Reaction*, London, Routledge: 147-167.
- Tan, C. (2011) *Governance Through Development: Poverty Reduction Strategies, International Law and the Disciplining of Third World States*, Oxon: Routledge
- Tripp, A. M. (2010). *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*. Boulder, Co, Lynne Rienner Publishers
- Vincet, J. (1989). Contours of Change: Agrarian law in Colonial Uganda, in J. Starr and J. Fishbourne Collier (eds), *History and power in the study of law: new directions in legal anthropology*, Cornell: Cornell University Press.
- Wheare, K.C. (1955) *Government by Committee*, Oxford: Clarendon
- White, T. H. (1964). *The making of the President, 1960*. New York, Atheneum Publishers.
- Williams, R. (1987); *Political Corruption in Africa*; Aldershot: Gower
- Williamson, J. (1989). What Washington means by Policy Reform; in Williamson, J (ed) *Latin American Readjustment: How Much has happened*; Washington, Institute for International Economics.
- World Bank, (1998) *Assessing Aid: What Works, What Doesn't and Why*, *World Bank Policy Research Report*, New York: Oxford University Press
- World Bank (1989). *Sub-Saharan Africa: From Crisis to Sustainable Growth. A Long Term Perspective Study*. Washington D.C., World Bank Publications.
- Wrong, M. (2009) *"It's our turn to eat: " The story of a Kenyan Whistleblower*, Harper Collins.

ARTICLES

- Abbot, K.W., & D. Snidal (2002) "Values and Interests: International Legalization in the Fight against Corruption," *Journal of Legal Studies* 31(1): 141-178
- Alai (2000) "The Legacy of Geographical Morality and Colonialism: A Historical Assessment of the Current Crusade Against Corruption" 33 *Vanderbilt Journal of Transnational Law* 877-904.
- Alesina, A. and B. Weder (2002). "Do corrupt governments receive less foreign aid?" *American Economic Review* 92(4): 1126-1137
- Alesina, A. and D. Dollar (2000). "Who gives foreign aid to whom and why?" *Journal of economic growth* 5(1): 33-63.
- Al-Marhubi, F.A., (2000), "Corruption and inflation," *Economics Letters* 66(2): 199-202.
- Anderson C.J. and Y. Tverdova (2003) "Corruption, political allegiances and attitudes towards government in contemporary democracies," *American Journal of Political Sciences* 47 (1): 91-109.
- Araral Jr, E. (2008). "Is foreign aid compatible with good governance?" *Policy and Society* 26(2):1-14.
- Azfar,O., Y. Lee, et al (2001), "The causes and consequences of corruption," *The Annals of the American Academy of Political and Social Science* 573(1): 42-56.
- Baker, B. (2004). "Popular Justice and policing from bush war to democracy: Uganda 1981-2004." *International Journal of the Sociology of Law* 32: 333-348.
- Ball, M. (1975). "Play's the Thing: An Unscientific Reflection on Courts under the Rubric of Theatre," *Stanford Law Review* 28: 81.
- Bantekas, I. (2006) "Corruption as an international crime and crime against humanity: an outline of supplementary criminal justice policies." *Journal of International Criminal Justice* 4(3): 466-484
- Barya, J. J. and J. Oloka-Onyango (1997). "Civil society and the political economy of foreign aid in Uganda." *Democratisation* 4(2): 113-138.
- Bayley, D. H. (1966), "The Effects of Corruption in a Developing Nation," *The Western Political Quarterly* 19(4): 719-732.
- Berman, J. (1998) "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism," *African Affairs* 97: 305-341.
- Bird, G. and D. Rowlands (2003). "Political economy influences within the life-cycle of IMF programmes." *The World Economy* 26(9): 1255-1278.
- Boswell, N.Z. and S. Rose-Ackerman (1996) "Corruption and Democracy," *Proceedings of the Annual Meeting (American Society of International Law)* 90: 83-90
- Bor, J. (2007). "The Political Economy of AIDS leadership in developing countries, an exploratory analysis," *Social Science & Medicine* 64: 1585-1599.

- Breitinger, E. (1992) "Popular Urban Theatre in Uganda: between Self-Help and Self-Enrichment," *New Theatre Quarterly*, 8: 270-290.
- Brett, E. (2008). "Neutralising the use of force in Uganda: the role of the military in politics." *The Journal of Modern African Studies* 33(01): 129-152.
- Bukovansky, M. (2006). "The hollowness of anti-corruption discourse." *Review of International Political Economy* 13: 181-209
- Burchell, G. (1993). "Liberal government and techniques of the self." *Economy and Society* 22(3): 267-282.
- Burnell, P. (1994). "Good Government and Democratization: A Sideways Look at Aid and Political Conditionality." *Democratisation* 1(2): 485-503.
- Calhoun, C. (2004). "A World of Emergencies: Fear, Intervention, and the Limits of Cosmopolitan Order." *The Canadian Review of Sociology and Anthropology* 41(4): 373-396.
- Cammack, D. (2007). "The Logic of African Neopatrimonialism: What Role for Donors?" *Development Policy Review* 25(5): 599-614.
- Campos, J.E., D. Lien , et al (1999) "The impact of corruption on investment: predictability matters," *World Development* 27(6): 1059-1067
- Carlen, P.(1976) "The Staging of Magistrates' Justice," 16 *British Journal of Criminology* 48
- Carr, I (2007) "Fighting Corruption Through Regional and International Conventions: A Satisfactory Solution?" *European Journal of Crime, Criminal Law and Criminal Justice* (2007) 121-153; at 141.
- Centa, R. and P. Mackelm,(2001), "Securing Accountability through Commissions of Inquiry: A role for the Law Commission of Canada," *Osgoode Hall Law Journal* 39: 117
- Ciganikova, M. (2008). "'Of Mustard Seeds and Democracy: Assessing the Impact of 'Movementocracy.'" *Stichproben. Wiener Zeitschrift für kritische Afrikastudien* 15.
- Comaroff, J. L. (2001). "Colonialism, Culture and the Law: A Foreword." *Law & Social Inquiry* 26(2): 305-314.
- De Maria, B (2008) "Neo-Colonialism through measurement: A critique of the corruption perceptions index," *Critical Perspectives on International Business* 4(2-3):184-202.
- De Maria, W. (2005), "Whistleblower Protection: Is Africa Ready?" *Public Administration and Development* 25(3) 217:226
- de Sardan, J. P. O. (1999). "A moral economy of corruption in Africa." *Journal of Modern African Studies* 37(1): 25-52.

- Doig, A. (1995). "Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies?" *Public Administration and Development* 15(2): 151-6
- Doig, A., D. Watt, et al. (2006), "Hands-on or hands-off? Anti-corruption agencies in action, donor expectations, and a good enough reality." *Public Administration and Development* 26(2): 163-172;
- Doig, A., D. Watt, et al. (2007). "Why do developing country anti-corruption commissions fail to deal with corruption? Understanding the three dilemmas of organisational development, performance expectation, and donor and government cycles." *Public Administration and Development* 27(3): 251-259.
- Donnelly, J. (2007) "The relative universality of human rights," *Human Rights Quarterly* 29(2): 281
- Doornbos, M. (2001). "'Good Governance': The Rise and Decline of a Policy Metaphor?" *Journal of Development Studies* 37(6): 93-108
- Doornbos, M. (2003), " "Good Governance": The metamorphosis of a policy metaphor," *Journal of International Affairs* 57(1): 3-17,
- Drewry, G. (1996), "Judicial Inquiries and Public Reassurance," *Public Law*: 368–83;
- Ekeh, P. (1975). "Colonialism and the two publics in Africa: A theoretical statement." *Comparative Studies in Society and History* 17(01): 91-112.
- Elliot, D and M. McGuinness, (2002) "Public Inquiry: Panacea or Placebo?" *Journal of Contingencies and Crisis Management* 10(1): 14-25.
- Erdmann, G. (2007). "Neopatrimonialism Reconsidered: Critical Review and Elaboration of an Elusive Concept." *Commonwealth & Comparative Politics* 45(1): 95-119, at 104
- Fafchamps, M. and T. Owens (2008) "The Determinants of Funding to African NGOs" *World Bank Economic Review* 23(2) 295-321.
- Finnemore, M. and K. Sikkink (2005). "International Norm Dynamics and Political Change." *International Organization* 52(04): 887-917.
- Florini, A. (1996). "The Evolution of International Norms." *International Studies Quarterly* 40(3): 363-389
- Fombad, C. M. (1999), "Curbing corruption in Africa: some lessons from Botswana's experience." *International Social Science Journal* 51(2): 241;
- Frank, M. (1996) "Theatre in the Service of Health Education: Case Studies from Uganda," *New Theatre Quarterly*, 12:108-115.
- Fritz, V. and A. R. Menocal (2007), "Developmental states in the new millennium: Concepts and challenges for a new aid agenda." *Development Policy Review* 25(5): 531-552

- Fritzen, S. (2006). "Beyond "Political Will": How Institutional Context Shapes the Implementation of Anti-Corruption Policies." *Policy & Society* 24(3): 79-96
- Ghai, Y. (1999). "Play in Two Acts: Reflections on the Theatre of the Law, A." *Hong Kong Law Journal* 29: 5.
- Gilligan, G. (2002). "Royal Commissions of Inquiry," *The Australian and New Zealand Journal of Criminology* 35(3): 289-307
- Goldsmith, A. (2003), "Foreign aid and statehood in Africa." *International Organization* 55(01): 123-148;
- Grindle, M. S. (2007). "Good enough governance revisited." *Development Policy Review* 25(5): 553-547
- Gupta, A. (1995). "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State." *American Ethnologist* 22(2): 375-402
- Gupta, S., H. Davoodi, et al (2002), "Does corruption affect income inequality and poverty?" *Economics of Governance* 3: 23-45
- Harrison, E. (2006). "Unpacking the Anti-corruption Agenda: Dilemmas for Anthropologists." *Oxford Development Studies* 34(1): 15-29
- Hart, J. (1995), "Presidential Lightning Rods: The Politics of Blame Avoidance." *American Political Science Review* 89(4): 1021-1022
- Hayner, P. B. (1994). "Fifteen Truth Commissions-1974 to 1994: A Comparative Study," *Human Rights Quarterly* 16: 597;
- Haynes, J. (2001). "'Limited' Democracy in Ghana and Uganda. What Is Most Important to International Actors: Stability or Political Freedom?" *Journal of Contemporary African Studies*, 19(2): 183-204
- Hills, A. (2007). "Police Commissioners, presidents and the governance of security." *Journal of Modern African Studies* 45(3): 403-423
- Himbara, D. and D. Sultan (1995). "Reconstructing the Ugandan state and economy: the challenge of an international Bantustan." *Review of African Political Economy* 22(63): 85-93.
- Jeppsson, A. (2002). "SWAp dynamics in a decentralized context: experiences from Uganda." *Social Science & Medicine* 55(11): 2053-2060.
- Joseph, R. (1997), "Democratization in Africa after 1989: Comparative and Theoretical Perspectives," *Comparative Politics* 29(3): 363-382, at p. 364.
- Kasoma, F.P. (1995), "The role of the independent media in Africa's change to democracy," *Media, Culture and Society* 17:537-555;

- Kaye, M. (1997), "The Role of Truth Commissions in the Search for Justice, Reconciliation and Democratisation: the Salvadorean and Honduran Cases." *Journal of Latin American Studies* 29(03): 693-716;
- Khan, M. S. and S. Sharma (2003). "IMF Conditionality and Country Ownership of Adjustment Programs." *The World Bank Research Observer* 18(2): 227-248
- Kiapi, A. (1973) "The role of inquiries in decision-making in East Africa," *International Review of Administrative Sciences*, 39:133.
- Knack, S. (2004). "Does Foreign Aid Promote Democracy?" *International Studies Quarterly* 48: 251-266
- Kofele-Kale, N. (2000) "The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law," *International Lawyer* 34(1):149-178
- Kubik, G. (1981) Neo-traditional popular music in East Africa since 1945, *Popular Music* 1:83-104.
- Kumar, C.R. (2003) "Corruption and human rights: promoting transparency in governance and the fundamental right to a corruption-free service in India," *Columbia Journal of Asian Law* 17: 31-72
- Leff, N. H. (1964). "Economic Development through Bureaucratic Corruption," *American Behavioral Scientist* 8(3): 8-14;
- Lockwood, T.J. (1967). "A History of Royal Commissions," *Osgoode Hall Law Journal* 5:172-209.
- Lowenstein, D. (1985) "Political Bribery and the Intermediate Theory of Politics" *UCLA Law Review* 32: 784:807
- Lustgarten, L. (1998). "The Arms Trade and the Constitution: Beyond the Scott Report." *The Modern Law Review* 61(4): 499-514.
- Lynch, E. (2007). "Uganda and US Foreign Policy." *Orbis* 50(1): 103-116
- M. Bulmer,(1983) "An Anglo-American Comparison: Does Social Science Contribute Effectively to the Work of Governmental Commissions?" *American Behavioral Scientist* 26(5):643-668.
- Majone, G. (1997). "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance." *Journal of Public Policy* 17(02): 139-167.
- Maoz, A. (2000). "Historical Adjudication: Courts of Law, Commissions of Inquiry, and Historical Truth." *Law & History Review*, 18: 559
- Mbaku, J. M. (1996) "Bureaucratic Corruption in Africa: The Futility of Clean-ups " *The Cato Journal* 16(1): 99-118

- McCoy, J. (2001) "The Emergence of a Global Anti-Corruption Norm," *International Politics* 38:65-90
- McLean, M. (2001). 'How does an Inquiry Inquire? A Brief Note on the Working Methods of the Bristol Royal Infirmary Inquiry', *Journal of Law and Society*, 28(4): 590–601.
- Mcmullan, J. and M. McClung (2006). "The Media, the Politics of Truth, and the Coverage of Corporate Violence: The Westray Disaster and the Public Inquiry." *Critical Criminology* 14(1): 67-86.
- Meagher, P. (2005). "Anti-corruption agencies: Rhetoric Versus reality." *The Journal of Policy Reform* 8(1): 69-10;
- Mohan, G. (2002). "The disappointments of civil society: the politics of NGO intervention in northern Ghana." *Political Geography* 21(1): 125-154
- Moskovitz, M. (1995). "The OJ Inquisition: A United States Encounter with Continental Criminal Justice," *Vanderbilt Journal of Transnational Law* 28: 1121.
- Moss, T. (2008). "US policy and democratisation in Africa: The limits of liberal universalism." *The Journal of Modern African Studies* 33(02): 189-209.
- Muhumuza, William (1997) Money and Power in Uganda's 1996 elections. *Afr.j. polit. sci.*, 2(1): 168-179.
- Munck, R. (2006). "Global civil society: royal road or slippery path?" *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17(4): 324-331
- Mungazi, D. A. (1989). "A Strategy for Power: Commissions of Inquiry into Education and Government Control in Colonial Zimbabwe." *The International Journal of African Historical Studies* 22(2): 267-285.
- Mwenda, A. (2007). "Personalising Power in Uganda." *Journal of Democracy* 18(3): 23-37
- Mwenda, A. M. and R. Tangri (2005), "Patronage Politics, Donor Reforms and Regime Consolidation in Uganda," *African Affairs* (104/416): 449-467.
- Mwesige, P. (2004) "Disseminators, Advocates and Watchdogs: A profile of Ugandan Journalists in the New Millenium," *Journalism* (1): 69-96;
- Nakayi, R., M. Twesiime-Kirya, et al. (2005). "The Women's Movement in Africa: Creative Initiatives and Lessons Learned." *East African Journal of Peace and Human Rights* 11(2).
- Nye, J. (1967). "Corruption and Political Development: A Cost-Benefit Analysis." *American Political Science Review* 61(2): 417-427
- Ocheje, P.D.,(2002), "Refocusing International Law on the Quest for Accountability in Africa: The Case against the "Other" Impunity," *Leiden Journal of International Law*, (15): 749-799.

- Odora, A. (2008). "Rising from the Ashes: The Rebirth of Civil Society in an Authoritarian Political Environment," *INT. J. NOT-FOR-PROFIT L.*, June: 79, 85.
- Oloka Onyango, J (1999) "The limits of expression under Museveni," *Uganda Journalism Review* I (1): 16-20
- Oloka-Onyango, J. (2004) "New-Breed" Leadership, Conflict, and Reconstruction in the Great Lakes Region of Africa: A Sociopolitical Biography of Uganda's Yoweri Kaguta Museveni, *Africa Today* 50(3): 29-52
- Pavarala, V. (1993). "Corruption as a site for contested meaning: Elite constructions in India." *Qualitative Sociology* 16(4): 405-422.
- Piers, C., A. Doig, et al. (2001). "Filing for corruption: Transparency, openness and record-keeping." *Crime, Law and Social Change* 36: 409-425.
- Pitcher, M., M. Moran, et al. (2009). "Rethinking Patrimonialism and Neopatrimonialism in Africa." *African Studies Review* 52(1), at p.145
- Popkin, M. and N. Roht-Arriaza (1995). "Truth as Justice: Investigatory Commissions in Latin America." *Law & Social Inquiry* 20(1): 79-116;
- Posadas, E., (1999) "Combatting Corruption Under International Law," *Duke Journal of International & Comparative Law* (10): 345-414
- Prasser, S. (1982), "Public inquiries: Their use and abuse," *Current Affairs Bulletin* 68(9): 4-12;
- Quimpo, N. G. (2005). "Oligarchic patrimonialism, bossism, electoral clientelism and contested democracy in the Philippines." *Comparative Politics* 37(2): 229-50
- Reiff, D. (1999) "In Defense of Afro-Pessimism," *World Policy Journal* 15(4): 10-22,
- Reimann, K. D. (2006). "A view from the top: international politics, norms and the worldwide growth of NGOs." *International Studies Quarterly* 50(1): 45-67.
- Rimmer, D. (2000). "Review Article: Aid and Corruption." *African Affairs* 99: 121-128.
- Salter, L. (1989-1990). "The Two Contradictions in Public Inquiries." *Dalhousie LJ* 12:173- 196
- Santiso, C. (2001). "Good Governance and Aid Effectiveness: The World Bank and Conditionality." *Georgetown Public Policy Review* 7(1): 1-22
- Schroth, P. (2005), "The African Union Convention on Preventing and Curbing Corruption," *Journal of African Law* 49: 24-38.
- Schroth, P. & P. Sharma (2003) "Transnational law and technology as potential forces against corruption in Africa," *Management Decision*, Vol. 41(3): 296 - 303
- Schroth, P. (2002)," The United States and the International Bribery Conventions," *American Journal of International Law*, 50:593-622;

- Scott, P. (2006), "Royal Commissions in Australia: When Should Governments Appoint Them?" *Australian Journal of Public Administration* 65(3): 28-47;
- Sedley, S. (1989), "Public Inquiries: A Cure or a Disease," *Modern Law Review* 52: 469;
- See D'Amato, A. (1985) "Is International Law Really Law?" *NorthWestern University Law Review* 79 (5 &6): 1293-1314.
- Segal, Z, (1984) "The power to probe into matters of vital public importance," *Tulane Law Review* 58: 941-973.
- Seligson, M. A. (2002). "The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries," *The Journal of Politics* 64(02): 408-433;
- Shen, C. and J. B. Williamson (2005). "Corruption, Democracy, Economic Freedom, and State Strength: A Cross-national Analysis." *International Journal of Comparative Sociology* 46(4): 327
- Shenhav, Y. and N. Gabay (2001). "Managing Political Conflicts: The Sociology of State Commissions of Inquiry in Israel." *Israel Studies* 6(1): 126-156
- Sheriff, P. E. (1983). "State Theory, Social Science, and Governmental Commissions." *American Behavioral Scientist* 26(5): 669-680
- Shihata, I. (1997), "Corruption: A General Review with an Emphasis on the role of the World Bank ," *Dickinson Journal of International Law*, 15: 451-486
- Simon, J: (2005), "Parrhesiastic Accountability: Investigatory Commissions and Executive Power in an Age of Terror," *Yale Law Journal* 114:1419-1457
- Snidal, D. (2002). "Rational choice and international relations." *Handbook of international relations*: 73.
- Snider and Kidane, (2007) "Combatting Corruption through International Law in Africa: A Comparative Analysis, 40 *Cornell International Law Journal* 691.
- Sulitzeanu-Kenan, R. (2006). "If They Get it Right: An Experimental Test of the Effects of the Appointment of UK Public Inquiries." *Public Administration* 84(3): 623-653.
- Tangri R., and A. Mwenda (2006) "Politics, donors and the ineffectiveness of anti-corruption institutions in Uganda." *Journal of Modern African Studies* 44(1): 101-124
- Tangri, R. and A. Mwenda (2001). "Corruption and cronyism in Uganda's privatization in the 1990s." *African Affairs* 100(398): 117-133.
- Tangri, R. and A. Mwenda (2003). "Military corruption & Ugandan politics since the late 1990s." *Review of African Political Economy* 30(98): 539-552.
- Thomas, P. A., (1982), "Royal Commissions," *Statute Law Review*: 40-50
- Tripp, A.M. (2001) "The politics of autonomy and co-optation in Africa: The case of the Uganda Women's Movement," *Journal of Modern African Studies* 39(1): 101-128

- Tyler, T.R. (2006) "Psychological perspectives on legitimacy and legitimation," *Annual Review of Psychology* 57:375-400, at p.1.
- van de Walle, N. (2003). "Presidentialism and clientelism in Africa's emerging party systems." *Journal of Modern African Studies* 41(02): 297-321.
- Walters, L. (1989), "Commissions and Bioethics," *Journal of Medicine and Philosophy* 14:363-368.
- Warwick Inquest Group, (1985) "The Inquest as a Theatre for Police Tragedy: The Davey Case," *Journal of Law and Society*, (12) 1: 35-61.
- Weiss, T. G. (2000). "Governance, good governance and global governance: conceptual and actual challenges." *Third World Quarterly* 21(5): 795-814.
- Wells, C. (1999). "Inquiring into Disasters: Law, Politics and Blame," *Risk Management*, 1: 7-20
- Wrage, S. and A. Wrage (2005). "Multinational Enterprises as "Moral Entrepreneurs" in a Global Prohibition Regime Against Corruption." *International Studies Perspectives* 6(3): 316-324
- Wring, D. (2005). "Politics and the Media: The Hutton Inquiry, the Public Relations State and Crisis at the BBC." *Parliamentary Affairs* 58(2): 380-393
- Zimring, F.E. and D.T. Johnson (2005) "On the comparative study of corruption," *British Journal of Criminology* 45(6):793-809.

THESES, DISSERTATIONS, CONFERENCE PAPERS, COMMISSIONED RESEARCH AND WORKING PAPERS

- Amundsen, I. (2006). Political Corruption and the Role of Donors in Uganda. *CMI Commissioned Report* Chr. Michelsen Institute;
- Asiimwe, G. B. and C. Muhozi (2005). *The State of Constitutional Developments in Uganda for the Year 2005*, Kituo Cha Katiba - East African Centre for Constitutional Development.
- Bretton Woods Project, (2003) *PRSPs: A Rough Guide*, April 2003, <http://www.brettonwoodsproject.org/topic/adjustment/index.html>, last accessed 8 December 2010.
- Cammack, D., F. Golooba-Mutebi, et al. (2007). *Neopatrimonial politics, decentralisation and local government: Uganda and Malawi in 2006*. Good Governance, Aid Modalities and Poverty Reduction Working Paper 2.
- Carbone, G. (2005). *'Populism' visits Africa: The Case of Yoweri Museveni and No-Party Democracy in Uganda*, Crisis States Programme Development Research Centre, Università degli Studi di Milano, Working Paper No. 73.

- Chibita, M. (2009) *Uganda Radio as a Political Space and the regulation thereof*, at http://www.iese.ac.mz/lib/publication/proelit/Monica_Chibita.pdf, last accessed 28 March 2011(unpublished)
- Cooksey, B. (2003). *Aid and Corruption: A Worm's-Eye View of Donor Policies and Practices*, paper presented at 11th International Anti-Corruption Conference Seoul, South Korea
- De Maria, W. (2005). *The New War on African "Corruption:" Just another neo-colonial adventure*, 4th International Critical Management Studies Conference. Cambridge University.
- Ellet, R. L. (2009), *Emerging Judicial Power in Hybrid African Democracies*, Beloit College Department of Political Science Working paper.
- Foster, M. (2000). "New Approaches to Development Co-operation: What can we learn from experience with implementing Sector Wide Approaches?" Working Paper – Overseas Development Institute
- Gill, S. (2000). *The Constitution of Global Capitalism*, paper presented at the International Studies Association Annual Convention. Los Angeles, USA
- Grant, H. (2002). *Commissions of inquiry : the modern day star chamber?* PhD Law Thesis, University of Queensland.
- Heeks, R. (2005). *Contextual Collision, Failure and Accommodation of Anti-Corruption Initiatives: When Rational Designs Meet Corrupt States*; paper presented at the Conference on Redesigning the State? Political Corruption in Development Policy and Practice, 25 November 2005, University of Manchester, UK
- Human Rights Watch (1999), *Hostile to Democracy: The Movement System and Political Repression in Uganda*, <http://www.hrw.org/legacy/reports/1999/uganda/>, accessed 01 February 2011.
- Human Rights Watch (2009). Open Secret, Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda
- Jeremy Pope, (2000) *Confronting Corruption: The elements of a National Integrity System, Transparency International Sourcebook*, available at <http://www.transparency.org/publications/sourcebook>, last accessed 20/02/2011.
- Kapur, D. and R. Webb (2000). *Governance-related conditionalities of the international financial institutions*, United Nations Conference on Trade and Development (UNCTAD) G-24 Discussion Papers Series, No. 6, <http://www.unctad.org/en/docs/pogdsmdpbg24d6.en.pdf>, accessed 17 January 2011
- Makara, S. (2009) *Deepening Democracy Through Multi-partyism: The Bumpy Road to Uganda's 2011 elections*, available at http://www.iese.ac.mz/lib/publication/proelit/Sabiti_Makara.pdf, accessed 01 February 2011.

Mwenda, A. (2003) *Playing mouse to the IMF and World Bank cat: How donors finance armed conflict, promote corruption, stifle democracy, and sustain state patronage: a case study of Uganda 1987-2003*. Unpublished.

Nogara, M. (2009), *The Role of the Media in curbing corruption: the case of Uganda under President Yoweri K. Museveni during he “no-party” system*, UN/DESA Working Paper No. 72, at <http://ssm.com/abstract=1338167>, accessed 20 July 2010.

Obidairo, T.S. (2008) *A fragile consensus on regulating transnational corruption: a case study of the OFFP and BAE scandals*, available at SSRN: <http://ssrn.com/abstract=1295903>.

Peebles, J. (2005). *"Unsatisfactory and unreliable" witnesses: Reexamining the January 1945 Uganda Strike through the pages of the Uganda Herald*. Mount HolyOke College, Bachelor of Arts Dissertation, Massachusetts.

Polzer, T. (2001), *Corruption: Deconstructing the World Bank Discourse*, Development Studies Institute, Working Paper 01-18, London School of Economics.

Prasser, S. G. (2003), *A Study of Commonwealth Public Inquiries*, School of Politics and Public Policy, Faculty of Commerce and Management, Griffith University Australia, Ph.D. Thesis.

Sulitzeanu-Kenan, R. (2006). *Blame avoidance and the politics of public inquiries in the UK, 1984-2003*. PhD Thesis, Division of Social Sciences, Wolfson College, University of Oxford.

The World Bank (2010) *“Silent and Lethal:” How Quiet Corruption Undermines Africa’s Development Efforts*, Africa Development Indicators 2010, at http://siteresources.worldbank.org/AFRICAEXT/Resources/english_essay_adi2010.pdf, accessed 31 January 2011.

Tumushabe, J. (2006). *The Politics of HIV/AIDS in Uganda*, United Nations Research Institute for Social Development.

Uganda Debt Network (2008) *The Leadership Code Act 2002: A Review of its Implementation Mechanisms*, <http://www.udn.or.ug/pub/LeadershipCodeAct.pdf>, accessed 01 February 2011.

Unsworth, S. (2007). *Rethinking Governance to Fight Corruption*. U4 Anti-corruption Brief (7).

Zwart, S (2003) *Uganda – The Fight Against Corruption: A case study on the prevalence of corruption in Uganda*, specifically in Local Government, Education, Justice, Law & Order, and Procurement, Commissioned by the Royal Netherlands Embassy, Uganda. At <http://www.u4.no/document/showdoc.cfm?id=94>, accessed 29 January 2011.

GOVERNMENT AND OFFICIAL DOCUMENTS AND PUBLICATIONS

Development Assistance Grant Agreement between the US Government (Millennium Challenge Account) and the Government of Uganda for strengthening Uganda's capacity to fight corruption, <http://www.mcc.gov/documents/agreements/daga-uganda.pdf>, accessed 18 January 2011.

Development Assistance Grant Agreement between the Government of the USA and the Government of Uganda, March 29, 2007, at <http://www.mcc.gov/documents/agreements/daga-uganda.pdf>, accessed 26 January 2011.

Final Report of the National Commission on Terrorist Attacks upon the United States, (2004) available at <http://www.gpoaccess.gov/911/pdf/fullreport.pdf>, accessed 02 February 2011.

GoU, MOFPED (1995) *Poverty Eradication Action Plan*, at <http://www.finance.go.ug/docs/PEAP%202005%20Apr.pdf>, accessed 29 January 2011, p. 117.

GoU, MOFPED (2003) *Poverty Status Report / PRSP Progress Report*, at <http://www.imf.org/external/pubs/ft/scr/2003/cr03301.pdf>, accessed 26 January 2011, pp. 82-83

Government of the United Republic of Tanzania and the Nordic Africa Institute (1994), *The Report of the Presidential Commission of Inquiry into Land Matters*

Government of Uganda (MOFPED), *The Uganda 2004/5 Budget: A Citizen's Guide*, <http://www.finance.go.ug/docs/citizensguide.pdf>, accessed 25 January 2011.

Government of Uganda, (2002) *Uganda Poverty Reduction Strategy Paper Progress Report 2002*.

Government of Uganda, Directorate of Public Prosecutions, *Annual Prosecution Report 2008*, available at <http://www.dpp.go.ug/images/stat3.gif>, accessed 29 January 2011.

Government of Uganda, Ministry of Finance, Planning and Economic Development (2005) *The Poverty Eradication Action Plan*, 2004/5 – 2007/8

Government of Uganda, National Planning Authority; (2010) *National Development Plan 2010/11-2014/15*

Government of Uganda, *Poverty Eradication Action Plan*, 2002/3

Government of Uganda, *Report of the Commission of Inquiry into Violations of Human Rights*, 1987

Inspectorate of Government, *Uganda National Integrity Survey Reports*, 1998, 2003 and 2008.

International Commission of Inquiry into Israeli Crimes Against the Lebanese and Palestinian Peoples (1982), *Eye-witness reports and conclusions of an international inquiry*, London.

International Development Association and International Monetary Fund (2005) *Poverty Eradication Action Plan Joint Staff Advisory Note*, [http://siteresources.worldbank.org/INTPRS1/Resources/Uganda_JSAN\(June23-2005\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/Uganda_JSAN(June23-2005).pdf), last accessed 15 January 2011.

Ministry of Foreign Affairs of Denmark, Embassy of Denmark, Kampala (2009) “Development Policy: Anti-corruption,” <http://www.ambkampala.um.dk/en/menu/DevelopmentPolicy/Goodgovernance/Anticorruption/> accessed 18 January 2011.

Ministry of Foreign Affairs, Denmark (DANIDA) (2005) *Annual Report*, Chapter One, <http://www.netpublikationer.dk/um/7410/html/chapter05.htm>, accessed 25 January 2011.

Ministry of Foreign Affairs, Denmark (DANIDA) (2006), *Evaluation of Danish Assistance to Uganda 1987-2005*, Volume 1. <http://www.um.dk/NR/rdonlyres/F197C164-6F33-43D5-AC62-C990BA32F70D/0/200606UgandaVol1.pdf>, accessed 25 January 2011.

Ministry of Foreign Affairs, Denmark, *Uganda-Denmark Partnership - Strategy for Development Cooperation 2004-2008*

Office of the Auditor General Uganda (2009), *Report to Parliament*, available at http://www.oag.go.ug/annual_reports.php?dId=1, accessed 27 January 2011.

Parliament of Uganda, (2009) *Report of the Committee on Commissions, Statutory Authorities and State Enterprises on the National Social Security Fund (NSSF) Purchase of Land in Temangalo, Wakiso District*, at http://www.parliament.go.ug/index.php?option=com_docman&task=cat_view&gid=71&Itemid=102, accessed 01 February 2011.

Parliament of Uganda, (2010) *Report of the Committee on the National Economy, 2009/10 Financial Year*.

Parliament of Uganda, (2010) *Report of the Public Accounts Committee on the Special Audit Report of the Auditor General on the Commonwealth Heads of Government Meeting (CHOGM) 2007*, available at <http://www.fdcuganda.org/PAC%20CHOGM%20AUDIT%20REPORT.pdf>, accessed 01 February 2011.

Report of an Inquiry by Sir William Macpherson of Cluny Presented to Parliament by the Home Secretary (February 1999).

Report of the Commission of Inquiry into Disappearances in Uganda, (1975), at http://www.usip.org/files/resources/collections/truth_commissions/Uganda74-Report/Uganda74-Report_sec1.pdf, accessed 08 February 2011.

Report of the Commission of Inquiry into Post-Election Violence, at http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf, accessed 08 February 2011.

Report of the Commission of Inquiry into the Uganda Ministry of Health Mismanagement of the Global Fund 2006

Report of the Commission of Inquiry into the Uganda Police Force, 1999.

Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G. by Lord Hutton, (2004), at <http://www.the-hutton-inquiry.org.uk/content/report/index.htm> , accessed 02 February 2011.

Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea, available at http://www.un.org/ga/search/view_doc.asp?symbol=S%2F2009%2F693&Submit=Search&Lang=E, accessed 02 February 2011.

Report of the Judicial Commission of Inquiry into the Goldenberg Affair, available at <http://www.tikenya.org/documents/Goldenberg%20Report.pdf>, accessed 08 February 2011;

Report of the President's Commission on the Assassination of President Kennedy, 1964, available at <http://www.archives.gov/research/jfk/warren-commission-report/letter.html>, accessed 02 February 2011.

Report of the United Nations International Commission of Inquiry on Darfur, (2005), available at http://www.un.org/news/dh/sudan/com_inq_darfur.pdf, last accessed 02 February 2011.

Republic of Kenya (2000) Report of the (Njonjo) Commission of Inquiry into the Land Law System of Kenya

Republic of Kenya (2004) Report of the (Ndungu) Commission of Inquiry into the Illegal/Irregular Allocation of Public Land.

Statement of Uganda's Development Partners on Governance and Anti-Corruption, Consultative Group Meeting Kampala, April 2003; available at <http://www.u4.no/document/showdoc.cfm?id=51>, last accessed 02 December 2010.

The World Bank, Joint Assistance Strategy for the Republic of Uganda (2005-2009), at <http://siteresources.worldbank.org/INTUGANDA/Resources/UJAS.pdf>, accessed 25 January 2011.

U4 Anti-Corruption Resource Centre (2009) Overview of Corruption in Uganda, Expert Answer prepared by Marie Chene and Robin Hodess, at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=191>, accessed 26 January 2011.

Uganda Bureau of Statistics, (2010) Statistical Abstract, available at <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2010StatAbstract.pdf>, last accessed 20/02/11.

Uganda Donor Democracy and Governance Group (DDGG), Memorandum of Understanding, 2003, available at <http://www.u4.no/document/showdoc.cfm?id=52>, last accessed 20 February 2011.

Uganda Inspectorate of Government (January-June 2009) *Inspectorate of Government Report to Parliament*

Uganda PEAP/PRSP 2000, at <http://www.imf.org/external/np/prsp/2000/uga/01/#2.4>, accessed 29 January 2011.

Uganda Police Force, (2009) Annual Crime Report 2008, http://www.upf.go.ug/police_annual_crime_report%202008.pdf, accessed 26 January 2011.

Uganda Public Procurement and Disposal of Assets Authority, Suspended Providers' Register, at http://www.ppda.go.ug/index.php?option=com_content&task=view&id=23&Itemid=41, accessed 26 January 2011.

Uganda's 2004/5 PEAP, at [http://siteresources.worldbank.org/INTPRS1/Resources/UgandaPEAP\(2005-Apr\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/UgandaPEAP(2005-Apr).pdf), accessed 29 January 2011

UK Department for International Development (DFID), (2006) Making Governance Work for the Poor - Helping to build states that work for poor people, White Paper, at <http://webarchive.nationalarchives.gov.uk/20070905124645/http://dfid.gov.uk/pubs/files/whitepaper2006/wp2006section2.pdf>, accessed 29 January 2011, p. 28.

UK Serious Fraud Office (2009) "Helping in the Fight Against Corruption in Uganda," Annual Report 2009, at <http://www.sfo.gov.uk/about-us/annual-reports--accounts/annual-reports/annual-report-2008-2009/helping-in-the-fight-against-corruption-in-uganda.aspx>; accessed 29 January 2011.

UNDP Human Development Report 2009, at http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_UGA.html, accessed 17 August 2010.

United Nations Office for Drugs and Crime (UNODC), (2001). United Nations Manual on Anti-Corruption Policy. Centre for International Crime Prevention, Vienna, Austria

United Nations Office of the High Commissioner for Human Rights (2000) Report of the International Commission of Inquiry on East Timor, at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.54.726,+S.2000.59.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.54.726,+S.2000.59.En), accessed 02 February 2011.

World Bank (1997) *World Development Report: The State in a Changing World*, http://www-wds.worldbank.org/external/default/WDSCContentServer/IW3P/IB/1997/06/01/000009265_3980217141148/Rendered/PDF/multi0page.pdf, accessed 29 January 2011.

World Bank, (2010) World Bank – Countries – Uganda- Highly Indebted Poor Countries (HIPC) Initiative, at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/UGANDA>

EXTN/0,,contentMDK:20225952~menuPK:473833~pagePK:141137~piPK:217854~theSitePK:374864,00.html; accessed 10 December 2010.

NEWSPAPER & MAGAZINE ARTICLES

Africa Confidential (2007). "Doctor, Doctor: How healthcare funds went astray just before an election – and the President's allies are under investigation again." *Africa Confidential* 48(20)

Allio, E. "Kakwemeire wins Anti-Corruption Activists Award 2006," *The New Vision*, 17 November 2006

Allio, Emmy "National Drug Authority Bosses in Row over Laboratory Chief," *The New Vision*, 30 May 2003;

Among, B. (2009) "Do we need a new anti-graft body?" *The New Vision*, 25 April 2009, at <http://allafrica.com/stories/200904271527.html>, accessed 02 February 2011.

Among, B. (2011) "US Applauds Uganda's role in Somalia," *The New Vision*, January 15 2011.

Anon, (2009) "Independent Editors charged with sedition" *The Daily Monitor*, 23 September 2009 http://www.monitor.co.ug/artman/publish/news/independent_editors, last accessed 15 October 2009.

Anon, "Japan: Bribery Shokku at the top," *Time Magazine*, Monday Aug. 09, 1976, <http://www.time.com/time/magazine/article/0,9171,914484,00.html>; accessed 17 January 2010.

Anon, "Sebutinde's star still rising" *The New Vision*, 29 July 2009, at <http://allafrica.com/stories/200907300162.html>, last accessed 10 February 2011.

Anon, Letter to the editor, *The Monitor*, 5 July 1999, at <http://allafrica.com/stories/printable/199907050063.html>, accessed 11 February 2011.

Anon, "Tension as NRM succeeds to block CHOGM report presentation, *The Daily Monitor*, May 11, 2010.

Ariko, C. (2010). Ministers' trial over GAVI funds to resume. *The New Vision*. Kampala, New Vision Publications Ltd.

Atuhaire, A.B. & S. Kasyate (2005), "Museveni defends General Saleh on Graft," *The Monitor*, 29 October 2005, at <http://allafrica.com/stories/.printable/200510280695.html>, last accessed 12 February 2011.

Bahikaho, C. (2008). Muhwezi to quit Politics. *The New Vision*.

Bareebe, G. (2007). "Is Museveni serious on corruption?" Road to 2011 Elections. Kampala. 2010

BBC News "Anger over secret Iraq Inquiry," at http://news.bbc.co.uk/1/hi/uk_politics/8102203.stm, accessed 16 February 2010.

BBC News (1998) "Corruption mars Uganda's privatisation," Sunday December 20th, 1998, at <http://news.bbc.co.uk/1/hi/world/africa/239072.stm>; accessed 29 January 2011.

BBC News (2009) "Anger over secret Iraq inquiry," available at http://news.bbc.co.uk/1/hi/uk_politics/8102203.stm, last accessed 08 February 2011.

BBC News (Africa) (1998) "Corruption mars Uganda Privatisation." Sunday December 20th 1998, at <http://news.bbc.co.uk/1/hi/world/africa/239072.stm>, last accessed 25 September 2010.

BBC News "Strike halts Uganda High Court," at <http://news.bbc.co.uk/1/hi/world/africa/4477110.stm>, last accessed 22 October 2009.

BBC News "Uganda unbowed after UK aid cut," 21 December 2005 at <http://news.bbc.co.uk/1/hi/world/africa/4549220.stm>; last accessed 26 March 2011.

BBC News, (2010) "BAE systems handed £286m criminal fines in UK and US," <http://news.bbc.co.uk/1/hi/business/8500535.stm>, last accessed 02 December 2010.

BBC News, "Uganda roots out tax corruption," Friday 15 March, 2002, at <http://news.bbc.co.uk/1/hi/business/1873529.stm>, last accessed 15 February 2011.

BBC News, Q & A: Stephen Lawrence Murder, 05 May 2004, at <http://news.bbc.co.uk/1/hi/uk/3685733.stm>, last accessed 09 February 2011.

BBC News. (2006). "Blair defends Saudi Probe Ruling," at http://news.bbc.co.uk/1/hi/uk_politics/6182125.stm, last accessed 02 December 2010.

Ben Byarabaha, "Entebbe Airport Scandal Deepens" *The Red Pepper*, Monday 27 July 2009

Burnett, M. (2009). Brutality in the name of security. *The Independent*. Kampala, Uganda.

Butagira, T. (2010). "Army is the most trusted public institution," *The Citizen*. Dar es Salaam, Nation Media Group.

Butcher, Tim (2003) President spends £20,000 so his grandchild can be born in Europe, *The Telegraph*, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/uganda/1443488/President-spends-20000-so-his-grandchild-can-be-born-in-Europe.html>, last accessed 10 November 2010.

Buwembo, J. (2000) "Bankers steal money while boring the public to death," *The East African*, 30 August 2000. Nation Publications Ltd, Nairobi.

Candia, S. (2005). "Global Fund Ban Lifted," *The New Vision*. Kampala.

Candia, s. (2009) "Gasasira Interdicted over Massive Wealth" *The New Vision*, 6th November 2009.

Charles Mwanguhya, "African Court: Government Blocks Kanyeihamba" *The Daily Monitor*, 3 June 2008.

Deborah Orr, "The Chilcot Inquiry is a waste of time," *The Guardian*, 04/02/2010, at <http://www.guardian.co.uk/commentisfree/2010/feb/04/chilcot-inquiry-tony-blair?showallcomments=true#start-of-comments>

"Denmark right to push government on wall," *The Daily Monitor*, Editorial, 29 August 2004.

Edward Anyoli, "Court Blocks Dismissal of Gasasira," *The New Vision*, 2nd November 2009;

Gastiounis, I., (2011) "Uganda's media gets down, dirty: 'gutter press' revels in sex, sensationalism," *The Washington Times*, 17 January 2011, at <http://www.washingtontimes.com/news/2011/jan/17/ugandas-media-get-down-dirty/>, accessed 02 February 2011,

Governance World Watch, 31 October 2002, "Probe shows Uganda Tax Authority Deeply Corrupt," at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan014267.htm#PFMAF01>, last accessed 23 February 2011.

Harera, P., D. Kalinaki et al, "URA letter names Kahooza," *The Monitor*, 20 February 2004.

Ikuya, J. M. (2009). "What purpose do Commissions of Inquiry Serve?" *The Weekly Observer*. Kampala, Observer Publications Ltd.

Independent Team, "Who wants IGG Mwondha out?" *The Independent*, 15 April 2009, at <http://www.independent.co.ug/index.php/cover-story/8...> last accessed 13 October 2009.

Izama, A (2009) "Jail is a heartbeat away as new law makes hiring a relative a crime," *The Daily Monitor*, 25 October 2010, at <http://allafrica.com/stories/200910260072.html>, last accessed 20 February 2010.

Izama, A. (2003), "Sailing without Ballast on IGG Ship," *The Daily Monitor*, 27 November 2003.

Izama, A. (2003), "Strange Bullets in Sebutinde Shootings," *The Monitor*, 13 October 2003, at <http://www.mail-archive.com/ugandanet@kym.net/msg07963.html>, accessed 03 February 2011.

Izama, A. "Uganda \$300 Million Electricity Deal Delayed Due to Bidding Concerns" *The Daily Monitor*, 15th April 2006, at <http://allafrica.com/stories/200604140449.html>, last accessed 11 April 2011.

Izama, A., "Jail is a heartbeat away as new law makes hiring a relative a crime," *The Daily Monitor*, 25 October 2009, <http://allafrica.com/stories/200910260072.html>, last accessed 9 November 2009.

Joachim Buwembo, "Bankers steal money while boring the public to death," *The East African*, 30 August 2000, at <http://allafrica.com/stories/200008300295.html>, last accessed 23 February 2011.

Juuko, S. "Sebutinde to probe URA," *The New Vision*, 15 March 2002.

Kadiresan, K. (2010). Speech by World Bank Country Manager on the occasion of the 2010 Budget Speech. *The Independent*. "Mr. President, you must start fighting corruption seriously," excerpts from a Speech by the Uganda World Bank Country Manager on the occasion of the 2010 Budget Speech, *The Independent*, 10 March 2010.

Kagaba, C. (2010), "The Whistleblower deserves deeper State protection," *The Daily Monitor*, 7 March 2010, at <http://allafrica.com/stories/201003080810.html>, accessed 31 January 2011.

Kagaba, C. (2010), "Whistleblower deserves deeper State Protection," *The Daily Monitor*, 7 March 2010, at <http://allafrica.com/stories/201003080810.html>, accessed 02 February 2010.

Kaiza, D., (2005) "Growing Concern as Ugandan Army infiltrates Police Force" *The East African*, 24 November 2005

Kalinaki, D., and Mwanguhya CM, "Colleagues Reject Sebutinde Report," *The Monitor*, 19 February 2004.

Kasasira, R., "Fotogenix faces Shs 8 Billion tax Fraud Inquiry," *The Daily Monitor*, 10 August 2009, at <http://allafrica.com/stories/200908101168.html>. Last accessed 11 November 2009.

Katende, B.R. (2010) New law to safeguard whistleblowers, *The Independent*, Tuesday 16 March 2010, <http://www.independent.co.ug/index.php/reports/special-report/71-special-report/2612-new-law-to-safeguard-whistleblowers?tmpl=component&print=1&page=,> last accessed 16 November 2010.

Kazoora, J. (2009). Chogmgate: I am surprised that we are surprised. *The Daily Monitor*. Nation Publications, Kampala.

Kiapi, E., "Uganda: The Media is Not Free," IPS News at <http://www.ipsnews.net/>, last accessed 23 October 2009.

Kiggundu, E. (2010) "New development plan raises fresh questions." *The Observer*. Kampala, Observer Publications Ltd.

Kiwawulo, C. (2005). "Local healers Defend Muhwezi." *The New Vision*. Kampala, The New Vision Publications Ltd

Leigh, D., Bob Evans and Mark Tran, "BAE pays fines of £285m over arms deal corruption claims;" *The Guardian*, Friday 5 February 2010, at <http://www.guardian.co.uk/world/2010/feb/05/bae-admits-bribery-saudi-yamamah>

Lewsi, P. & R. Evans, "Ugandan is jailed in UK bribery crackdown," *The Guardian*, 23 September 2008, at <http://www.guardian.co.uk/uk/2008/sep/23/ukcrime.law>, last accessed 23 February 2011.

Luggya, J. & P. Nyanzi (2006) "The Highs and Lows of the Justice Ogoola Commission of Inquiry into the Global Fund," *The Monitor*, 16 April 2006, at <http://allafrica.com/stories/printable/200604170160.html>, last accessed 12 February 2011.

Lumu, D. T. and Stephen Kibuuka, "Kutesa to sue over CHOGM report," *The Observer*, Sunday 09 May 2010.

Mary Karugaba and Milton Olupot, "NSSF Minority Report Out," *The New Vision*, 13 Oct 2009 <http://allafrica.com/stories/200810300099.html>, accessed 29 October 2008.

Matsiko Mucoori, "Museveni's Love-hate Relationship with the Media," *The Independent*, Tuesday 20 October 2009.

Matsiko wa Mucoori, (2010) "When Museveni is Chief Detective Besigye becomes a Criminal," <http://www.independent.co.ug/index.php/column/guest-column/68-guest-column/2832-when-museveni-is-chief-detective-besigye-becomes-a-criminal-?tmpl=component&print=1&page=>, accessed 01 February 2011.

Matsiko wa Mucoori, "Chopper Contract Weak – Museveni," *The Monitor*, Thursday 7 June 2001.

Matsiko wa Mucoori, "Day one in the Chopper Probe," *The Monitor*, Wednesday April 19, 2001.

Matsiko wa Mucoori, "Police brutality shocks Sebutinde," *The Monitor*, 5 October 1999, available at <http://www.allafrica.com/stories/printable/199910050080.html>, last accessed 11 February 2011.

Matsiko wa Mucoori, "Sebutinde fires up rural folk, many heads to roll in police," *The Monitor*, 6 November 1999, at <http://allafrica.com/stories/printable/199911060050.html>, last accessed 11 February 2011.

Matsiko wa Mucoori, P., (1999) "Judge shuts up Basoga as tempers flare," *The Monitor*, 25 June 1999, <http://allafrica.co./stories/printable/199906250170.html>, last accessed 13 February 2011.

Matsiko, w. M. (2001a). Saleh got junk copter suppliers, says Mbonye. *The Monitor*. Kampala, Monitor Publications.

Matsiko, w. M. (2001b). Muntu says Museveni okayed copter contract. *The Monitor*. Kampala, Monitor Publications Ltd.

Matsiko, w. M. (2001c). Saleh admits Shs 1.3bn bribe in copter deal. *The Monitor*. Kampala, Monitor Publications Ltd.

Mubangizi, M. (2009). "CID Bosses not Clean." *The Observer*. Kampala, Observer Publications Ltd;

Mubatsi A.H. (2010) "Events that shaped the last decade in Uganda 2000-2010," *The Independent*, Sunday 09 January 2011, at http://www.independent.co.ug/index.php?option=com_content&view=article&id=3808:events-that-shaped-the-last-decade-in-uganda-2001-2010&catid=71:special-report&Itemid=167, last accessed 23 February 2011.

Mubatsi Asinja Habati (2010) "Hitting Them Where it Hurts?" *The Independent*, 25 August 2010.

Mugerwa, Y., and W. Wafula, (2010) "Uganda's Finance Minister emerges top," *Africa Review* 12 October 2010, at <http://www.africareview.com/News/Ugandan%20Finance%20minister%20emerges%20top/-/979180/1031100/-/hf52h0z/-/index.html>, accessed 12 January 2010.

Mugerwa, Yassin, "Donors want CHOGM officials punished," *The Daily Monitor* 9 May 2010.

Mugisa, A. (2010). "Stolen Global Fund Money Recovered," *The New Vision* 3 April 2010. Kampala, New Vision Publications Ltd.

Mugisa, A. And M. Olupot, (2001) "Museveni testifies on copters," *The New Vision*, 7 June 2001, *Kampala*.

Mukisa, L. (2010). Global Fund: Cheeye's Appeal Kicks Off. *The Daily Monitor*. Kampala, Nation Media Group

Mulera, M. K. (2010). Let's deal Mr. President. *The Daily Monitor*. Nation Publications Ltd, Kampala.

Mulumba, B. D. (2004) "Did Sebutinde step in a trap?" *The Monitor*, 22 August 2004.

Mulumba, BM, "Revenue probe accepts anonymous letters," *The Monitor*, 23 September 2002.

Muniini K. Mulera "Letter to a Kampala Friend: Mbabazi doomed by his own hand" *The Daily Monitor*, 13 October 2008, at http://www.monitor.co.ug/artman/publish/muniini/Mbabazi_doomed_by_his_own_hand_73028.shtml, accessed 22 October 2009.

Musoke, Cyprian, CHOGM report not on agenda – Kadaga, *The New Vision* Monday 17th May 2010.

Mutumba, R. (2005) "Norway cuts aid over Kisanja," *The Daily Monitor*, 19 July 2005, at <http://allafrica.com/stories/200507181633.html>; last accessed 22 February 2011.

Muyita, S. (2005). "Sebutinde takes tough look to Sierra Leone." *The Monitor*. Kampala.

Muyita, S. "Sebutinde attacks judge over report," *The Monitor*, 18 August 2004.

Mwenda A., (2004) Commissions of Inquiry: A Mockery of Justice, *The Monitor*, 7 March 2004.

Mwenda and Tangri (2005); op. cit. See also Mwenda, A. (2007) "Personalising Power in Uganda." *Journal of Democracy* 18(3): 23-37.

Mwenda, A. "Africa is democratising; here is how." *The Independent*. 11 July 2010. Kampala, Independent Publications Ltd.

Mwenda, A. (2010) "When Corruption is Accountability," *The Independent*, 03 November 2009, at <http://www.independent.co.ug/index.php/component/content/article/2040?format=pdf>, accessed 01 February 2011.

Mwenda, A. (2011) "Uganda has the third largest cabinet in the world," *The Independent*, Wednesday 19 January 2011, at <http://www.independent.co.ug/cover-story/3824?task=view>, accessed 29 January 2011.

Mwenda, A. M. (2002). Sebutinde Pins Katto, Saleh, over Choppers. *The Monitor*. Kampala, Monitor Publications.

Mwenda, A. M. (2004). "Commissions of Inquiry: a mockery justice." *The Monitor*, 6 March 2004. Kampala.

Mwenda, A., "Family Rule in Uganda," *The Independent* <http://www.independent.co.ug/index.php/cover-story/cover-story/82-cover-story/690-family-rule-in-uganda->, last accessed 9 November 2009.

Naturinda, Sheila, (2010) "Donors slice Aid citing Chogm Mess," *The Daily Monitor*, August 10, 2010 <http://www.monitor.co.ug/News/National/-/688334/974164/-/x39f2p/-/index.html>, accessed 10 August 2010.

"New Law to Safeguard Whistleblowers: Special Report," *The Independent* (2010), <http://www.independent.co.ug/reports/special-report/2612-new-law-to-safeguard-whistleblowers>, accessed 02 February 2011.

Nganda, S. I. (2007). Police Recruits 40% from the West. *The Weekly Observer*. Kampala.

Ngatya, K. (2009). "Taso to manage Global Fund Cash," *The Daily Monitor*. Kampala, Nation Media Group.

Njoroge, J. (2008) "Temangalo Scandal Consumes Nation," *The Independent*, Thursday 25 December 2008.

Ochieng, H. (2010). 68% want Museveni to retire in 2011. *The Daily Monitor*. Kampala.

Ochieng, Henry "Sebutinde Police Report finally out," *The New Vision*, 29 May 2001, at <http://allafrica.com/stories/200105290337.html>, accessed 10 February 2011.

October 2009;

Olupot, M. (2006) "Buturo ordered to refund Mega FM shs20m," *The New Vision*, Monday 30th October 2006.

- Onyango-Obbo, C. (1998). "Vacancy; Only Thieves Need Apply," *The Monitor*, Kampala, Monitor Publications Ltd.
- Onyango-Obbo, C. (1998). "Vacancy; Only Thieves Need Apply." *The Monitor*. Kampala, Monitor Publications Ltd.
- Onyango-Obbo, C. (2001). It's in their nature: the army simply loves junk. *The East African*. Nairobi, Nation Media Group.
- Onyango-Obbo, C. (2009), "Why even village quarrels end up on Museveni's desk," *The Daily Monitor*. Kampala, Nation Publications Ltd.
- Osike, F. (2001). "Sebutinde Report Out," *The New Vision*. Kampala.
- Palast, G., (2000), "War on Corruption? Not quite, Minister," *The Guardian*, 09 July 2000, at <http://www.guardian.co.uk/business/2000/jul/09/columnists.guardiancolumnists>, last accessed 18 January 2011.
- Press Release by Committee to Protect Journalists, "Ugandan radio stations shut; debate programs banned" at <http://cpj.org/2009/09/four-ugandan-radio-stations-shut-debate-programs-b.php>, last accessed 22 October 2009.
- Reporters Without Borders Report on Uganda "Net censorship reaches Sub-Saharan Africa," <http://www.rsf.org/Net-censorship-reaches-sub-Saharan.html>, 24 February 2006, last accessed 22 October 2009;
- "Scandals: Lockheed's Defence: A right to bribe?" *Time Magazine*, Monday Aug. 18, 1975, at <http://www.time.com/time/magazine/article/0,9171,917751-1,00.html>, accessed 17 January 2010.
- Scheier, R. (2003). Uganda's answer to corruption: fiery 'Lady Justice'. *Christian Science Monitor*.
- Sebunya, C. (1999) "The Rise and Fall of Salim Saleh," *New African*, March 1999, at http://findarticles.com/p/articles/mi_qa5391/is_199903/ai_n21436337/, accessed 31 January 2011.
- Sheila Naturinda, "Amama Mbabazi's Long Journey to Another Day" *The Daily Monitor*, 9 November 2008
- Simon Jenkins, "Tony Blair at Iraq inquiry - the ghost that came back to life," *The Guardian* 30 January 2010, at <http://www.guardian.co.uk/uk/2010/jan/29/tony-blair-iraq-inquiry-chilcot>, accessed 31 January 2010.
- Simwogerere Kyazze, "Everyone can do with a big pay increase," *The Daily Nation*, April 16, 2006, Nairobi: Nation Publications.
- Ssali, H.H., "Sebutinde Rejects Ex-URA Cheif's Defence," *The Monitor*, 29 October 2002, at <http://allafrica.com/stories/200210300479.html>, last accessed 23 February 2011.
- Ssemujju Ibrahim Nganda, "Imbalance: Police Recruits 40% from West" *The Weekly Observer*, 09 August 2007.

Suleman, M., (2010) "The Great Curse of the '1986 Revolution' exposed," Uganda Correspondent, at <http://www.ugandacorrespondent.com/articles/2010/12/the-great-curse-of-the-1986-%E2%80%98revolution%E2%80%99-exposed/>, accessed 01 February 2010.

The Banker "Finance Minister of the Year/ Africa: Dr. Ezra Suruma, Uganda," at <http://www.thebanker.com/Awards/Finance-Minister-of-the-Year>, last accessed 12 January 2010.

The Economist (1999). "A guide to graft." 353(8143): 86.

The Telegraph, 10 October 2009, "'Tony Blair has 'blood on his hands,' says father of killed soldier," at <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/6286081/Tony-Blair-has-blood-on-his-hands-says-father-of-killed-soldier.html>, last accessed 09 February 2011.

Tucker, C., "Seeing Through Transparency International," *The Guardian*, 22 May 2008, <http://www.guardian.co.uk/commentisfree/2008/may/22/seeingthroughtransparencyin>, last accessed 18 January 2011 .

Tumusiime, James "New Vision's Managing Director quizzed over police corruption report," *The Monitor*, 24 October 2000.

"Uganda: ICJ alarmed by assault on Civilian Judiciary, press releases issued 13 and 15 December 2005, at [http:// www.icj.org](http://www.icj.org)

Wallis, D. (2005). "Uganda minister denies blame for AIDS fund scandal," *Reuters News Media*, Kampala.

Wanambwa, R. (2010) "The CHOGM Inquiry and the post- 2011 State," *The Daily Monitor*, 3 April 2010, at <http://allafrica.com/stories/201004050154.html>, accessed 29 January 2011.

Wanyama, D. (2010) "If you love Bi-Nigeria, then go watch the CHOGM play," *Daily Monitor Blogs*, at <http://blogs.monitor.co.ug/politics/if-you-love-bi-nigeria-then-go-watch-the-chogm-play/>, last accessed 22 February 2011.

Wasike, A, "Government to use Sebutinde Report to fight graft in URA," *The New Vision*, 11 March 2004.

Wasike, A. "'Kahoza had URA Interests,' says Minister," *The New Vision*, 20 February 2004

Wendo C. (2008) "Uganda: Why Global Fund Whip is cracking now," *The New Vision*, 31 October 2008; at <http://allafrica.com/stories/printable/200811010025.html>, last accessed 28 September 2009.

"Who is General Salim Saleh?" *The Daily Monitor*, Tuesday February 9, 2010, at <http://www.monitor.co.ug/-/691150/858764/-/item/0/-/990dc7/-/index.html>, accessed 31 January 2011.

"Worries over 'toothless' new anti-graft law" The East African, <http://www.theeastafrican.co.ke/news/-/2558/533030/-/rka63oz/-/index.html>, last accessed 6 November 2009.

Xinhua News Agency, "East Africa Law Society to sue Ugandan gov't over court siege" http://english.peopledaily.com.cn/200703/08/eng20070308_355373.html, last accessed 22

Yassin Mugerwa, (2009) "Stop Defending Corrupt Bush War Comrades," *The New Vision*, <http://allafrica.com/stories/200909070144.html>

Yunusu Abbey and F. Kiwanuka, "Chopper Probe Starts," *The New Vision*, 23 February 2001, at <http://allafrica.com/stories/200102230220.html>, last accessed 12 February 2011.

WEBSITES, INTERNET PUBLICATIONS AND BLOGS

Anti-Corruption Coalition of Uganda, <http://www.accu.or.ug/>, accessed 02 February 2011.

Anti-Corruption Task-Force of Uganda, <http://www.facebook.com/pages/Anti-Corruption-Taskforce-Uganda-ACT-Uganda/103997792973415>.

Freedom House (2009), Freedom of the Press Annual Report, at <http://www.freedomhouse.org/uploads/pfs/372.pdf>, accessed 02 February 2010.

Iraq Inquiry Blog 2010, <http://www.theiraquinquiry.net/2010/01/think-it-wont-be-whitewash-think-again.html>

Global Integrity (2007), Global Integrity Report – Uganda, at <http://report.globalintegrity.org/Uganda/2007>, accessed 01 February 2011.

Global Integrity (2009), "Foreign aid may not help anti-corruption enforcement in aid-dependent countries," at <http://report.globalintegrity.org/globalindex/findings.cfm#ForeignAid>, accessed 01 February 2011.

Global Integrity, <http://report.globalintegrity.org/Uganda/2009>, accessed 22 September 2010

Global Integrity's methodology, at <http://report.globalintegrity.org/methodology.cfm>, last accessed 22 February 2011.

Global Integrity's story, at <http://www.globalintegrity.org/aboutus/story.cfm>, last accessed 22 February 2011.

Heacock, R., (2007), "Self-reflection and the search for meaning in the Ugandan blogosphere," Global Voices, at <http://globalvoicesonline.org/2007/05/17/self-reflection-and-the-search-for-meaning-in-the-ugandan-blogosphere/>, accessed 02 February 2011.

I write what I like <http://kyomuhendoa.wordpress.com/>

International Whistleblowers, (2010), “Uganda: Get Paid for Leaking Graft Secrets,” <http://www.internationalwhistleblowers.com/whistleblowers/39-whistleblowers-news/656-uganda-get-paid-for-leaking-graft-secrets.html>, accessed 31 January 2011.

Jasper Tumwijukye, <http://jaspermt.blogspot.com/>,

Kagumire, R. “Rosebell’s Blog,” <http://rosebellkagumire.com/about/>,

Kituo Cha Katiba (East African Centre for Constitutional Development), Uganda: Key Historical and Constitutional Developments, at http://kituochakatiba.org/index.php?option=com_content&task=view&id=80, last accessed 17 February 2011.

Moses Paul Sserwanga’s “Uganda Journalist and Advocate” blog, at <http://msserwanga.blogspot.com/2007/08/information-act-a-ship-without-radar.html>, accessed 02 February 2011.

Reporters Without Borders, Press Freedom Index, at http://en.rsf.org/spip.php?page=classement&id_rubrique=33, accessed 02 February 2011.

The Analyst, at <http://www.observer.ug/>

The Daily Monitor, www.monitor.co.ug;

The East African (weekly), www.eastafrican.co.ke

The Free Dictionary, <http://legal-dictionary.thefreedictionary.com/Kangaroo+Court>, accessed 09 February 2011.

The Independent, www.independent.co.ug

The Iraq Inquiry, website, <http://www.iraqinquiry.org.uk/>, last accessed 20/02/11.

The Weekly Observer, www.observer.ug

Transparency International <http://www.transparency.org/publications/gcr>,

Transparency International, 2007-2010, Global Corruption Report, <http://www.transparency.org/publications/gcr>, accessed 19 January 2011.

Tumuhimbise, J. (2009). Jasper's Views: Corruption in Uganda. Kampala, <http://jaspermt.blogspot.com/>, accessed 17 March 2011

Tumuhimbise, J. (2009). Poverty or political will? Jasper's Views: Corruption in Uganda, at <http://jaspermt.blogspot.com/>, last accessed 24 February 2011.

Tumwijukye Mutambuka, “Ugandan Insomniac,” at <http://ugandaninsomniac.wordpress.com/>

Uganda Debt Network, <http://www.udn.or.ug/>, accessed 02 February 2011.

Uganda Donor Projects Database, at <http://www.u4.no/projects/project.cfm?id=297>, accessed 29 January 2011.

Uganda National NGO Forum, http://www.ngoforum.or.ug/about/uganda_glance.htm, last accessed 23 October 2009.

Uganda President's official website, List of Achievements at <http://www.statehouse.go.ug/achievement.php?category=Achievements>, last accessed 16 October 2009.

United Nations Office on Drugs and Crime, at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>, last accessed 22 September 2010.

United States Department of State, <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>, accessed 17 August 2010.

World Economic Forum, Partnering Against Corruption Initiative, <http://www.weforum.org/issues/partnering-against-corruption-initiative>, accessed 20 January 2011.

OTHER SOURCES

Abafrika ba Mungu, "Enguuzi," <http://www.youtube.com/watch?v=FhLg2R-ULJo>, last accessed 17 February 2011.

Anti-corruption Music, <http://anticorruptionmusic.org/?home>, last accessed 20/02/11.

Bavubuka All Stars, "Nsobedwa," <http://www.youtube.com/watch?v=e8yVbtzcXtM>, last accessed 17 February 2011.

Bebe Cool and Sweet Kid, "Corruption," <http://www.youtube.com/watch?v=7QfTdFi7ZWE>, last accessed 17 February 2011.

Jungle the man-eater, "Akeyo," <http://www.youtube.com/watch?v=i2A7CGXxUZ8>, last accessed 17 February 2011.

Nabweru Parents' School, "Corruption ndwade mbi," <http://www.youtube.com/watch?v=3T8uOFxIOKI>, last accessed 17 February 2011.

Tamba and Qwela, "Chai," <http://www.youtube.com/watch?v=XOV1iD8RpJo>, last accessed 17 February 2011.

Mwanguhya-Mpagi, C. (2007). "KFM Hotseat" radio talkshow, hosting Miria Matembe, former Minister for Ethics and integrity. Kampala, 93.3 KFM.

Appendix

Commissions of Inquiry in Uganda (1962- present)

YEAR	SUBJECT/ TERMS OF REFERENCE	CHAIR
1962	To review the boundary between the Districts of Bugisu and Bukedi and to make such recommendations for its adjustment as may appear to the Commission to be desirable on political and administrative grounds	Kennedy O'Connor
1962	To inquire into and report to the Governor on the	F.G. Sembeguya

	underlying reasons for the recent disturbances amongst the Baamba and Bakonjo people of Toro District and to make recommendations in light of their investigations	
1968	To inquire into the allegations of the breach of the constitution of the Uganda Labour Congress by the Executive Board, the bad management and financial affairs of the Congress generally	Godfrey Lukongwa Binaisa, Q.C.
1970	To inquire into all aspects of the disappearance and reappearance of Mr. Brian Alistair Lea, First Secretary in the British High Commission (believed to have been kidnapped by persons unknown)	Mr. Justice Robert Ernest Gordon Russell
1971	To inquire into the management, workings and financial condition and all aspects of trading activities of the National Trading Corporation	Mr. Justice Y.V. Phadke
1971	To inquire into the management, workings and financial condition of the Coffee Marketing Boards and the Coffee Industry generally in Uganda	Mr. Justice E.E. Youds
1971	To inquire allegations of corruption in all its aspects by any person notified by the Commissioners to be a person possessing property which he is believed to have acquired by corrupt means or which he obtained from or is holding for or on behalf of or for the benefit of a person who acquired it by corrupt means in the discharge of the public affairs or business of the Government	Mr. G.B. Slade
1971	To inquire into the constitution, management and objects of the General Service Department	Mr. Justice P. Saldanha
1971	To inquire into all aspects of the disappearance of Mr. Nicholas Stroth (freelance journalist) and Mr. Robert Siedle (university lecturer), both American citizens	Mr. Justice David Jeffreys Jones
1971	To inquire into the various complaints and allegations made by the employees and workers of Kampala City Council regarding the conduct, administration and management of that Council by its officers	Mr. Peter Austin Philip Jermyn Allen, Chief Magistrate
1971	To inquire into all matters pertaining to land owned, possessed, acquired or otherwise held by the Church of Uganda or any diocese thereof	Mr. Justice Saldanha
1972	To inquire into the management and workings of and the services and facilities provided to the public by Mulago Hospital Kampala	Hon. Justice John William Mead
1973	To inquire into all matters pertaining to the assessment of compensation on the Bukoloto-Njeru	Mr. E.K. Mutyabule

	Road	
1974	To inquire into allegations of missing persons in Uganda	Mr. Justice Mohamed Saied
1974	To inquire into all matters pertaining to the assessment of compensation arising from the construction of Bukoloote-Njeru Road, Kayunga-Nabuganyi Road and Kayunga-Bbaale Road	Mr. E.K. Mutyabule
1975	To inquire into all matters pertaining to the management, development, working conditions, finances and all aspects of business activities of the Uganda Transport Corporation.	Col. Isaac Maliyamungu
1975	To inquire into all matters pertaining to the management of Kilembe Mines Ltd	Dr. Adriko
1975	To inquire into all matters pertaining to the management, finance, development, and all other aspects of business activities of Uganda Airlines	Hon . A. Oboth-Ofumbi
1976	To inquire into all matters pertaining to the management and administration of medical services and facilities in Uganda	Col. Ibrahim
1976	To inquire into all matters pertaining to Makerere University	Professor B.W. Langlands
1977	To inquire into the disappearance of the Twin Otter Plane (Type D.H.C. 6/200) Registration No. 5x-UVL , which occurred on Sunday 1 January 1977	Hon. H.K.M.Kyemba
1977	To inquire into the circumstances surrounding the aviation incident involving the crash of Bell Helicopter 212, Registration No. 5X-UWF	Lieutenant-Colonel C. Gore
1978	To inquire into all matters pertaining to the management, finance and all other aspects of business of Uganda Airlines Corporation	Eng. Eric Adriko
1980	To inquire into all matters pertaining to the management and operations of Uganda Hotels Ltd, including allegations of nepotism, terms of service of staff and directors, accounting systems etc	Mr. Tamale Ssali
1980	To inquire into all matters pertaining to the management and administration of the National Council of Sports	Mr. Luutu Mukasa
1980	To inquire into the circumstances surrounding and leading to the incident at Kibuli Village which resulted into the killing of a number of persons including a Tanzanian Security Officer, on 16 th and 17 th days of March 1980	Mr. Justice D.K. Lubogo
1981	To inquire into all matters pertaining to the handling	Hon. David

	of donations towards the President's Liberation War Veterans, Widows and Orphans Charity Fund including allegations of misappropriations and embezzlement	Kanyeihamba
1983	To inquire into all matters appertaining to the financial management of Kampala City Council including allegations of corruption in the purchase and utilisation of supplies and equipment, as well as allegations of embezzlement on the Council's funds by staff	Hon. G.S. Kasajja-Byakika, M.P.
1986	To inquire into the cause and all circumstances surrounding the escape of 27 remand prisoners from the Murchison Bay Prison, Luzira on the night of 27 th February 1986	Mr. Justice Matthew Opu
1986	To inquire into all allegations of corruption and financial mismanagement in all aspects, in government departments, and other public bodies	Mr. Besweri K.L. Mulondo
1986	To inquire into all aspects of violation of human rights, breaches of the rule of law and excessive abuses of power committed against persons in Uganda by the regimes in government during the period from 9 October 1962 to 25 January 1986	Justice Arthur Oder
1986	To investigate and inquire into the present system of local administration with a view to improving and reforming the Local Administrations system	Prof. Mahmood Mamdani
1987	To review, examine and inquire into the present health system and policy in Uganda including the public, private and traditional systems	Prof. Raphael Owor
1987	To inquire into all matters pertaining to the financial management of Rutembe and Rushororo Water Supply Project, the repair of Ishaka-Katunguru Road Project and the Tea Factories Project at Kyenjojo, Mityana and Buhweju including allegations of mismanagement and corrupt practices therein	Mr. Onegi-Obel
1987	To inquire into all the setting up, management and working of government ranches with a view to effecting reforms and improving efficiency thereof	Prof. Mugerwa, Faculty of Agriculture
1988	To inquire into all the problems, complaints and allegations of corruption, misappropriation, coercion, embezzlement and general mismanagement of finances, property and staff of Uganda Tourist Development Corporation	Mr. Henry Muganwa Kajura
1989	To inquire into complaints and allegations of	Mr. David Nyende,

	corruption, mismanagement and abuse of office in Uganda Police Force	
1991	To inquire into the Makerere University Incident of 10 th December 1990 that resulted into the death or injury of certain persons at the University Camous and the conduct of the Police with regard to shooting and other acts carried out by the Police on that occasion	Jon. Mr. Justice Platt
1991	To inquire into all matters pertaining to the financial management of the East African Steel Corporation and in particular, allegations of widespread embezzlement of funds	Mr. Peter Jemba-Kaggwa
1992	To inquire into all matters pertaining to the proper functioning of the Uganda Posts and Telecommunications Corporation and in particular, allegations of corruption, malpractice and racketeering by the management	Mr. Justice Egonda-Ntende
1993	To inquire into the allegations of mismanagement on the investigation, prosecution and trial or criminal cases by the Criminal Investigations Department of the Police Force, the Director of Public Prosecutions and the Courts of law	Justice D.C. Porter
1994	To inquire into all matters pertaining to the proper administration and functioning of the Judiciary including court fee, case management, rules of procedure, cash bail funds and staffing and training needs of the Judiciary	Justice Harold Platt
1995	To inquire into complaints and allegations of anomalies and corruption in the allocation of plots in Mbarara Municipal Council	Mr. Amos Twinomujuni
1996	To inquire into the allegation of suspected frauds in Graduated Tax Administration in Mbarara District	Justice Kibuuka Musoke
1996	To inquire into complaints and allegations of misappropriation and misapplication of monies intended for the provision of services in Tororo and Pallisa Districts	Justice Musoke - Kibuuka
1998	To inquire into allegations of impropriety concerning the privatisation of Uganda Commercial bank	Justice James Ogoola
1999	To generally investigate allegations of corruption within the Police force and where necessary, make recommendations for the purpose of improving the efficiency and effectiveness of the Police Force	Justice Julia Sebutinde
1999	To examine the primary causes of the failure and	Justice James

	subsequent closure of the International Credit Bank, the Greenland Bank and the Cooperative Bank	Ogoola
2000	To inquire into all the circumstances pertaining to the procurement, purchase, acceptance, delivery and payment for MI-24 helicopters for the army	Justice Julia Sebutinde
2001	To review the Constitution of 1995	Prof Frederick Sempebwa
2001	To inquire into Allegations of Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo	Justice David Porter
2001	To inquire into leasing of the Constitution Square by Kampala City Council to a Private Company	Lt. Col. Chris Mudoola
2002	To inquire into Allegations of Corruption in Uganda Revenue Authority	Justice Julia Sebutinde
2005	To inquire into the matters pertaining to the proposal for creation of a New District from Tororo County	Professor Foster Byarugaba
2005	To investigate the direct and indirect causes of the collision between the Uganda Railways Corporation vessels, MV Kabalega and MV Kaawa on Lake Victoria which took place on 8 th May 2005	Mr. Bart Katureebe
2005	To inquire into Allegations of Mismanagement of the Global Fund to fight AIDS, Tuberculosis and Malaria	Justice James Ogoola
2005	To inquire into the sale, lease and purchase of land in Kampala City by the City Authorities Notice 2005	Prof James Katorobo
2006	To inquire into the land issue of Bunyoro region and the inter-tribal relationship of the communities living there	Dr. Ruth Mukama
2007	To inquire into allegations of Financial and Administrative Irregularities in Kampala Central Division	Ms Irene Ovonji-Odida
2008	To inquire into Serulanda/Ssesamirembe Free Trade Zone Activities	
2008	To inquire into the Management of the Public Affairs of Makindye and Kawempe City Division Councils and Mbarara Municipal Council	Mr. Jacob Oulanyah
2010	To inquire into the destruction of the Kasubi Royal Tombs (World Heritage Site) Fire	Justice Steven George Engwau
2011	To inquire into the mismanagement of funds for Universal Primary and Secondary Education	Justice Ezekiel Muhanguzi